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VOL. I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 393

FEDERAL TRADE COMMISSION, PETITIONER

vs.

ROYAL MILLING COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 23, 1932
CERTIORARI GRANTED OCTOBER 24, 1932

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Memorandum for Docket Section 714

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

In the matter of
Royal Milling Company, et al. } Docket No. 1597

I, Otis B. Johnson, secretary of the Federal Trade Commission, do hereby certify that transmitted herewith is a full, true and correct transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

Part 1—Pleadings and Testimony.
Part 2—Exhibits to Testimony (original).
Part 3—Exhibits to stipulation (original) together with pleadings in the following dockets:
Docket 1598—Tennessee Grain Company, et al.
Docket 1599—Nashville Roller Mills, et al.
Docket 1600—Snell Milling Company, et al.
Docket 1601—Wautaga Milling Company, et al.
Docket 1602—State Milling Company, et al.
Docket 1604—Cherokee Mills, et al marked as follows:
Part 4—Pleadings in Dockets 1598, 1599, 1600, 1601, 1602, and 1604.
Part 5—Exhibits to stipulations in Dockets 1598, 1599, and 1600 (original).
Part 6—Exhibits to stipulations in Dockets 1602 and 1604 (original).

That this transcript is certified to the United States Circuit Court of Appeals for the Sixth Circuit, pursuant to the filing in said Court of a petition for review of an order to cease and desist, dated April 16, 1931, entered by the Federal Trade Commission in that proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 28th day of October, A. D., 1931.

Otis B. Johnson,
Secretary.

(Seal)

United States of America
BEFORE FEDERAL TRADE COMMISSION

In the Matter of John McGraw, E. A. Glennon, Co-Partners, doing business under the name of Royal Milling Co., etc., and individually.	Docket No. 1597

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To Create a Federal Trade Commission to define its powers and duties, and for other purposes," the Federal Trade Commission charges that John McGraw and E. A. Glennon, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: The respondents are members of a partnership which has been for three years last past and is engaged, in the City of Nashville, State of Tennessee, in the business of purchasing wheat flour from mills located in the middlewest which they cause to be transported to their place of business in the City of Nashville, where it is blended and mixed with certain leavening agents, such as baking powder, to produce the commodity known to the public and dealers as "self-rising flour." In the course of their business as aforesaid, respondents have during the period above named, practiced and are now practicing the acts and things described in the following:

Respondents solicit orders for their products from dealers in various States other than Tennessee, and contract to sell and deliver, and do sell and cause to be transported to purchasers outside of the State of Tennessee their products as above described. Respondents in said business are in competition with individuals, partnerships and corporations likewise engaged in the business of selling self-rising flour in interstate commerce who either grind the flour they mix as aforesaid, or purchase the flour they so use, and do not represent that they grind the flour so used. Respondents, in carrying on their business as aforesaid, solicit orders and sell their products principally to retail grocers, through the mail service.

Paragraph Two: Respondents operate under the trade names of "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company."

Complaint

Paragraph Three: In connection with their business under said trade names respondents, in their correspondence soliciting orders and selling their products as aforesaid, use the following letterheads and statements:

"ROYAL MILLING COMPANY
Plain Patent Self-rising."
"Daily capacity 1500 barrels."

"RICHLAND MILLING CORPORATION
Manufacturers of high grade flour
Nashville, Tennessee
Daily capacity 1000 barrels."

"EMPIRE MILLING COMPANY
Manufacturers of high grade flour
Daily capacity 1500 barrels."

In their letters soliciting orders, respondents use other representations implying they are grinders and millers of flour.

Respondents' products are sold under a number of brands or labels. These products are packed and delivered in cotton or other bags on which are stamped in conspicuous letters the trade names as aforesaid; namely, "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company" and the following descriptions of the contents: "Standard patent self-rising flour," "Fancy patent self-rising flour," "Best patent self-rising flour," "Superlative self-rising flour," and "Superlative patent plain."

Paragraph Four: Respondents own or operate no mill or machinery other than devices for mixing flours, purchased by them, with other ingredients as above described, and do not grind the flour they sell.

Paragraph Five: The use by the respondents of the trade names "Royal Milling Company," "Empire Milling Company" and "Richland Milling Company," in their business and the representations in their business correspondence and otherwise as aforesaid, have the capacity and tend to lead dealers and prospective purchasers of their products to believe that in purchasing them they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman or any element of cost of a middleman's profits, and to induce purchases of their flour by dealers and prospective purchasers on that understanding and belief; and said practices constitute unfair methods of competition with millers and manufacturers of flour likewise engaged

in interstate commerce who grind the flour they offer for sale, alone or mixed as self-rising flour, and with producers and sellers of self-rising flour, likewise engaged in interstate commerce, who do not grind and manufacture, but buy and sell flour, made by others, used in their products, and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and producers of self-rising flour, in that said practices of respondent tend to take away their business by false representations.

Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission, on this 19th day of April, A. D. 1929, now here issues this its complaint against respondents.

NOTICE.

Notice is hereby given you, John McGraw and E. A. Glennon, respondents herein, that the 3rd day of June, A. D., 1929, at 10:30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Commission, in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required within thirty (30) days from service of the complaint, unless such time be ex-

Notice

tended by order of the Commission, to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answers and failure to answer (Rule III) provide as follows:

(1) In case respondent shall desire to contest the proceeding such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 19th day of April, A. D., 1929.

By the Commission:

Otis B. Johnson,
Secretary.

(Seal)

THE JOINT AND SEPARATE ANSWER OF JOHN McGRAW AND E. A. GLENNON, INDIVIDUALLY AND AS CO-PARTNERS, TO THE COMPLAINT IN THIS CAUSE FILED AGAINST THEM—Filed May 20, 1929.

Respondents for answer say:

Answering Paragraph One:

1. Respondents admit that they are members of a partnership, doing business in Nashville, Tennessee, but deny that the nature and duration of said business is correctly described in the complaint, the facts being as follows:

In 1902, one R. C. Lindsey began the manufacture of self-rising flour in Nashville, Tennessee, under the trade name "Royal Milling Company."

Thereafter, in May 1917, a corporation was formed, with a capital stock of $50,000.00, which took over the good will, machinery, fixtures, etc., of said business.

Thereafter, in 1927, these respondents purchased the interest of said Lindsey in the "Royal Milling Company," surrendered its charter, and began operating as a partnership under the trade name "Royal Milling Company."

The making of self-rising flour is both a manufacturing and a milling process, whereby, through the use of machinery, flour and other ingredients are manufactured into a distinct product.

2. Respondents admit that they solicit orders for their products, so manufactured, from dealers in States other than Tennessee, and that they sell and cause to be transported the product so manufactured to purchasers outside the State of Tennessee.

3. Respondents admit that others compete with respondents in the sale of self-rising flour, but respondents are without knowledge as to whether these competitors are individuals, partnerships, or corporations, or as to what extent, if any, they are engaged in Interstate Commerce.

4. Respondents deny that those of said competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with respondents, and on the contrary aver that said "miller," to a greater or less extent, buy flour which they make into self-rising flour by the same process used by respondents, and put out this product in their own bags and under their own brands, and respondents insist that "unfair competi-

tion" cannot be claimed for their protection, as hereinafter shown. Respondents are without knowledge of any so-called "blenders" of self-rising flour in competition with respondents who "do not represent that they grind the flour so used," as alleged in the complaint.

5. Respondents admit that they solicit orders and sell their products principally to retail grocers, but deny that this is done principally through the mail service.

Answering Paragraph Two:

Respondents admit that they operate under the trade name of "Royal Milling Company," as already explained, and also under the trade names "Empire Milling Company" and "Richland Milling Company."

Answering Paragraph Three:

1. Respondents admit that in their business correspondence, soliciting orders and selling products, they use letter heads containing the words "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company," but deny that said letter heads are otherwise correctly described in this paragraph of the complaint. Respondents insist that the use of the word "Milling" in said trade names was and is without intent to deceive, and does not in fact deceive, and has no tendency to deceive respondents' customers and prospective customers. As heretofore shown, the original business had been begun and conducted for approximately twenty-five years under the name "Royal Milling Company."

2. Respondents deny the unwarranted conclusion (no facts being stated) that in their letters soliciting orders they use other representations implying that they are grinders and millers of flour.

3. It is true that respondents' products are sold under a number of brands or labels, and three of these brands are registered.

4. It is true that respondents' products are packed or delivered in cotton or other bags, and that said bags are stamped in conspicuous lettering, with the names "Royal Milling Company," "Empire Milling Company" and "Richland Milling Company," and that the contents are in part described as set forth in the complaint, but the entire description of the contents is not given in the complaint, and respondents therefore deny that it is correct. In this connection respondents state that the words "Patent Flour" or "Patent Plain Flour" have a technical meaning, well understood in the trade, and have no tendency to make respondents' customers, or any one

conversant with the flour business, believe that respondents were themselves grinding such flour.

Answering Paragraph Four:

Respondents admit that they do not grind the flour which they sell, and aver in this connection that they have never claimed to grind such flour; but respondents deny that they own no machinery or mill other than devices for mixing flours, and aver on the contrary that they own machinery adapted to the manufacturing and milling process which is necessary to produce self-rising flour, and that their plant and equipment (exclusive of good will) is valued at more than $25,000.00.

Answering Paragraph Five:

1. Respondents deny that the use by respondents of the trade names "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company," and the alleged representations in their business correspondence and otherwise (no facts being stated in the complaint) have the capacity, and tend to lead dealers and prospective purchasers of their products to believe that in so purchasing they are buying flour direct from a miller and manufacturer of flour without the intervention of a middleman or any element of cost of a middleman's profits, and to induce purchases of their flour by dealers and prospective purchasers on the understanding and belief, as alleged in the complaint.

2. Respondents aver that the wheat "miller" does not, and cannot, make self-rising flour by the use of his grinding machinery, but is compelled to first get his raw flour, either by grinding or purchase, and then by a separate milling process, and by separate machinery, (practically the same as that used by these respondents) turn it into self-rising flour. The "miller" who grinds his own flour has no advantage thereby, for he must absorb the local crop of wheat which may or may not be good, whereas, the so-called "blender" can buy the best flour wherever it is produced, and can buy such flour at actual cost. The explanation of this is that by selling their surplus at actual cost the wheat-grinding millers from whom he purchases are enabled to keep their mills going night and day, thus greatly reducing cost.

3. Respondents aver that there is no "middleman's profit" involved unless the self-rising flour which has been manufactured, as aforesaid, in the same way by both "miller" and "blender" is sold through a jobber; and where this is not done, and where the sale is made direct

to the retailer, middleman's profits on self-rising flour are in fact eliminated.

4. Respondents further aver that the so-called "miller" has no advantage as to cost of manufacture, for it costs him as much, or practically as much, to manufacture his raw flour as it does for respondents to buy their raw flour, which they otbain very cheaply, for the reason hereinbefore stated. The production of self-rising flour is, as aforesaid, a spearate milling process, as to which the so-called "miller" has no advantage, but is rather at a disadvantage.

5. Respondents further deny that said practices constitute unfair methods of competition with millers and manufacturers of flour alleged to be engaged in interstate commerce, who grind the flour they offer for sale alone or mixed as self-rising flour, and with producers of self-rising flour alleged to be engaged in interstate commerce who do not represent themselves to be millers or manufacturers of flour, as alleged in the complaint.

Respondents further deny that they are in competition with any sellers or raw or plain flour, and deny that they claim to be manufacturers of plain flour, and deny that their customers or prospective customers believe them to be engaged in the manufacture and sale of plain flour.

6. Respondents deny that they have made any false representations to the injury of said "millers" and producers of self-rising flour, and that they have taken away their business by false representations, as alleged in the complaint.

7. Respondents deny that said acts and practices, alleged to have been committed by respondents, are all to the prejudice of the public, and constitute unfair methods of competition within the meaning of the Federal Trade Commission Act, and aver on the contrary that this proceeding, which is in fact (although not intentionally) in the interest of a few private individuals, is to the injury of the public and not within the spirit or letter of the Act.

Answering The Whole Complaint, respondents, in addition to the defenses hereinbefore set out, for further defense say:

1. Respondents deny that the complainant, the Federal Trade Commission, has jurisdiction of this proceeding.

2. Respondents deny that this proceeding falls within, or is covered by the said Act of Congress creating the Federal Trade Commission.

3. Respondents deny that this is a proceeding in the interest of the public, and insist that the practices described in the complaint do not substantially tend to affect the public to its injury.

4. Respondents insist that this proceeding, so far from being in the interest of the consuming public, is in fact (although not intentionally) in the interest of a few private individuals, competitors of respondents; that the effect of sustaining this proceeding will be to injure respondents and make their competition less effective, in that they will be charged by said competitors with fraudulent and willfully unfair practices; and that the effect of so reducing the competitive power of respondents will be to ultimately raise the price to the consuming public to its injury.

5. Respondents further state that the use by them of the word "Milling" and of the word "Manufacturers" has been and is in good faith, and under claim of lawful right; that no fraud or deceit of any kind has been practiced on the public (none being charged in the complaint); that there has been no substitution by respondents of an inferior for a superior article, to the injury and deception of the consuming public; that the wheat "miller" does not manufacture self-rising flour by the use of his grinding mill, but by the same process as that used by respondents manufactures the same self-rising flour which is in no wise superior to the product of respondents, but which is more apt to be inferior.

6. Respondents are without knowledge of any producers of self-rising flour (so-called "blenders") who claim to have been injured in competing with respondents by the use of the words "Milling" or "Manufacturer," and deny that any persons claiming to be so injured are their competitors, but allege on the contrary that the competitors who are objecting to the use of said words by respondents are individuals, firms, or corporations owning wheat-grinding mills, but also engaged in the manufacture and sale of self-rising flour in competition with respondents.

With respect to such competitors, respondents insist that they follow the same practice characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and

for the protection of competitors, who are themselves engaged in the same practices condemned by the complaint.

7. Respondents aver that their sales are made to customers who are familiar with their methods, and that none of their customers are in fact deceived or misled into thinking that they operate a wheat-grinding mill; and respondents aver that it would not be to their advantage if they did think so, because better self-rising flour can be made by the socalled "blender." The "miller" is to a large extent dependent on the local crop, but respondents can buy wherever the crop is best.

8. Respondents deny that they have represented, or led their customers or the public to believe, that middleman's profits are excluded, etc., as alleged in the complaint. This charge is a mere unwarranted inference or conclusion, without facts alleged to support it.

9. Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October 1916 handed down an opinion, which remains of record, denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors.

10. Respondents for further defense submit that the complainant Federal Trade Commission, after ex parte investigation, has prejudged this case on questions of fact which are of vital, if not controlling importance, in that its authorized agent, acting in its behalf, has in writng stated that said Commission was of the opinion that respondents are not engaged in a manufacturing or milling process.

Respondents do not charge any bad faith, or intentional unfairness, on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and

that these respondents are thereby denied due process of law, in this proceeding.

And respondents further submit that if the Federal Trade Commission Act is to be construed as authorizing such procedure, such portion of said Act contravenes the Fifth Amendment to the Constitution of the United States, in that the Federal Trade Commission is not only undertaking to act at the same time as litigant and judge —which is contrary to the fundamental maxim that no man shall be a judge in his own case—but its findings of fact, although erroneous and contrary to the weight of the evidence, are conclusive if supported by any material evidence, and for this reason a full review of its action by an impartial tribunal is denied, and litigants are thereby deprived of their property without due process of law.

11. Respondents further aver that they have no wish, and have never had any wish or intention, to use unfair methods in competition, and have never used the words "Milling" or "Manufacturer" or any other words mentioned in the complaint, with any intent to deceive or make false representations of any kind, being advised on the contrary that said words are truthful and fully authorized under the facts hereinbefore set out; and respondents submit that they should not be required to give up the trade name under which a valuable good will has been acquired; that this would inflict an unnecessary loss and hardship on respondents, and would in no wise benefit the public; that the trade name "Royal Milling Company," especially, has a long established good will for which respondents paid a substantial price in acquiring the business.

12. Respondents further state that they and other Nashville manufacturers of self-rising and processed flour supply a trade which is accustomed to buy in small quantities, and such service is an economic necessity in said territory, and is in the interest of dealers and of the consuming public, and enables consumers to obtain these products at a lower price than would be possible if such service were withdrawn or discontinued.

Respondents further aver that all self-rising and processed flour is of the same general type, whether manufactured by the so-called "millers" or the so-called "blenders," and that competition between them can only be determined, and is in fact determined, by three factors, to-wit, price, quality, and service. The grinding of flour in a particular mill is not, and cannot be, a factor.

Wherefore, respondents having fully answered, pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville Trust Building,
Nashville, Tennessee.

AMENDED COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that John McGraw and E. A. Glennon, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: The respondents are members of a partnership which has been and is engaged in the City of Nashville, State of Tennessee, in the business of purchasing various lots and grades of wheat flour from mills located in the middle west, which they cause to be transported to their place of business in the City of Nashville, and their blending and mixing the flours so purchased by them, and putting up in sacks and offering for sale the mixtures and blends resulting therefrom, in some cases adding leavening agents such as baking powder to the blends or mixtures producing the commodity known to the public and in the trade as "Self-rising flour." In the course of their business as aforesaid respondents have solicited and now solicit orders for their products from dealers in various states other than Tennessee, and contract to sell and deliver, and do sell and cause to be trans-

ported to purchasers outside of the State of Tennessee their products as above described. Respondents in said business are in competition with individuals, partnerships and corporations likewise engaged in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extract therefrom the product known as flour; or purchase the flour they offer for sale, whether in plain or self-rising form, and do not in their trade names or otherwise in the conduct of their business use the terms "mill," "mills," "millers" or "milling" or otherwise represent that they are engaged in the manufacture of flour as above described. Respondents in carrying on their business as aforesaid solicit orders and sell their products largely to retail grocers through the mail service.

Paragraph Two: Respondents operate under the trade names of "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company." Respondents in the conduct of their business as aforesaid use such statements as the following:

"ROYAL MILLING COMPANY
Plain Patent Self-Rising"
"Daily Capacity 1500 Barrels."

"RICHLAND MILLING COMPANY
Manufacturers of High Grade Flour"
Nashville, Tennessee
"Daily Capacity 1000 Barrels."

"EMPIRE MILLING COMPANY
Manufacturers of High Grade Flour"
"Daily Capacity 1500 Barrels."

In their letters soliciting orders respondents use other representations implying that they are manufacturers of flour as above described. Respondents' products are packed and delivered in cotton or other bags on which are stamped in conspicuous letters the trade names as aforesaid; namely, "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company" and the following descriptions of the contents: "Standard Patent Self-rising Flour," "Fancy Patent Self-rising Flour," "Best Patent Self-rising Flour," "Superlative Self-rising Flour," "Superlative Patent Plain," and other similar descriptions.

Paragraph Three: Respondents own or operate no

mill or machinery other than devices for blending or mixing lots and grades of flours purchased from millers as above described and adding leavening agents. They manufacture no flour by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour and they own or operate no mill or machinery fitted for that purpose.

Paragraph Four: The use by respondents of the trade name "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company" in their business and the representations in their business correspondence and otherwise as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flour to believe that in purchasing their products they are buying direct from a miller or manufacturer of flour as above described and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchasers of their flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce who make as above described the flour they offer for sale and with sellers of plain and self-rising flour likewise engaged in interstate commerce who do not so manufacture but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondents are false and misleading and tend to take away their business.

Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission, on this 3rd day of September, A. D., 1929, now here issues this its amended complaint against respondents.

NOTICE.

Notice is hereby given you, John McGraw and E. A. Glennon, co-partners doing business under the name of Royal Milling Co., etc., and individually, respondents herein, that the 4th day of October, A. D., 1929, at 2 o'clock in the afternoon is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required on or before said date, to file with the Commission an answer to the complaint. If answer is filed appearance on that date will not be required and the hearing on the charges will be postponed to a later date, due notice of which will be given. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule III) provide as follows:

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint) file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegations of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the

Notice

complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to appear to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, The Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 3rd day of September, A. D. 1929.

By the Commission: Otis B. Johnson,
Secretary.

ANSWER TO AMENDED COMPLAINT—Filed Oct. 3, 1929.

The Joint and Separate Answer of John McGraw and E. A. Glennon, individually, and as co-partners, to the Amended Complaint in this cause filed against them.

Respondents for answer say:

1. Respondents admit that they are engaged in the manufacture of self-rising or processed flour, in the City of Nashville, Tennessee, but deny that said business and the process of manufacturing said products are correctly described in the complaint.

Respondents further aver that in 1902, one R. C. Lindsey began the manufacture of self-rising flour in Nashville, Tennessee, under the trade name "Royal Milling Company"; that thereafter, in May, 1917, a corporation was formed, with a capital stock of $50,000.00, which took over the good will, machinery, fixtures, etc., of said business; that thereafter, in 1927, these respondents purchased the interest of said Lindsey in the Royal Milling Company, surrendered its charter, and began operating as a partnership under the trade name "Royal Milling Company."

Answer to Amended Complaint

2. It is admitted that respondents contract to sell and sell and deliver their products outside the State of Tennessee.

3. Respondents admit that they are in competition with others in making and distributing said products, but they are without knowledge as to whether said competitors are individuals, partnerships, or corporations, or as to whether they are engaged in Interstate Commerce, or as to whether they manufacture the flour sold, by grinding or crushing wheat, or as to whether they purchase the flour which they offer for sale, and do not, in their trade names, or otherwise, use the term "Mill," "Miller," or "Milling," or otherwise represent that they are engaged in the manufacture of flour, etc., as alleged in the complaint.

4. It is admitted that respondents solicit orders, and sell their products largely to retail grocers, but they deny that this is done principally through the mail service.

5. Respondents deny that those of their competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with those respondents, and on the contrary aver that they, to a greater or less extent, buy flour from others, which they make into self-rising flour by the same methods used by respondents, and put out this product in their own bags and under their own brands; and respondents aver that the same is true with respect to "processed" flour.

6. Respondents admit that in the conduct of their business, as aforesaid, they solicit orders and sell their products under the names of "Royal Milling Company," "Empire Milling Company," and "Richland Milling Company."

7. Respondents deny that the letter-heads, bags, and advertising matter and the statements therein appearing, are correctly described in the complaint.

8. Respondents admit that the words "Mills," "Milling," and "Manufacturer" are used by them in connection with their letter-heads, advertising matter, and bags, in the conduct of their business.

9. Respondents deny that in their letters soliciting orders they use representations implying that they are manufacturers of flour, in the sense of making the same from wheat by grinding or crushing the same.

10. Respondents deny that they own or operate no mill or machinery other than certain mixing devices, etc., and aver that they own machinery adapted to the manufacture of self-rising and processed flour, which is both

a milling and manufacturing operation, the value of respondents' plant being approximately $....., and of their machinery and equipment approximately $....., and of their investment, capital, etc., approximately $..... or a total investment of approximately $..... Respondents' plant has a capacity of about ..... barrels a day on a twenty-four-hour basis. In 1928 respondents did a business of approximately $.....

It is true that respondents grind no wheat or other cereals, and own no w' eat-grinding machinery.

11. Respondents deny that the use of the aforesaid trade names with the word "Milling" separately, or in combination with the term "Manufacturer," or any other statements on respondents' letter-heads, bags, etc., has any tendency to make dealers or prospective customers or consumers believe that they are buying flour from a miller and manufacturer without a middle man's profits, etc., as claimed in the complaint.

12. Respondents deny that any false representations are thereby made, and deny that these alleged practices, if proven, constitute any unfair competition with millers and makers of self-rising flour or processed flour, alleged to be likewise engaged in Interstate Commerce, etc.

13. Respondents deny that said alleged actions have the effect of taking away business improperly from said alleged competitors, and on the contrary aver that said conduct, if proven, could have no such possible effect.

(a) Because the so-called "Millers" do not and cannot make self-rising flour with their grinding mills, but must first obtain raw flour, either by grinding it, or by purchasing the same, and then turn it into self-rising flour.

(b) Because said "Millers" obtain no advantage from making self-rising flour from the flour which they grind, but are rather at a disadvantage, both as to cost of production of the raw flour, and as to its quality, as will be shown at the hearing.

(c) Because self-rising and processed flour, no matter by whom made or sold, is essentially the same product destined for consumption in a particular region, and the buyers of such flour are governed by only three factors, to-wit; price, quality, and service.

(d) Because there is no pretense in the complaint that self-rising or processed flour made by the so-called "miller" is any better than that manufactured by the so-called "blender," and there is no deception of the

public by substituting an inferior for a superior article.

14. Respondents aver that those of their competitors who are "millers" follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors who are themselves engaged, as against respondents, in the same practices condemned by the complaint.

15. Respondents deny, as hereinbefore set out, that the use of the words "Mills," "Milling," or "Manufacturer," misleads, or has a tendency to mislead, any substantial portion of the purchasing or consuming public, in that they may be led to believe they are buying from one who grinds his wheat. But respondents are willing to cut off the possibility of deceiving, or misleading, any purchaser or customer through the use of the words above quoted, and to this end have heretofore offered, and hereby offer, to place on their letter-heads, bags, invoices, etc., in conspicuous lettering the words:

"NOT GRINDERS OF WHEAT"

Respondents believe and state that they are "millers" and "manufacturers"—in that they turn out a distinct product by the use of milling machinery—but they are not, and do not claim to be, grinders of wheat, and are willing that this be distinctly and unequivocally stated.

16. Respondents, under the trade names aforesaid, have asquired a valuable good will, and they insist that it would be unjust and inequitable to deprive them of this.

Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October, 1916, handed down an opinion, which remains of record, refusing and denying the contentions of the so-called "millers," and upholding the

"milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors, thereby depriving respondents of the valuable good will which they have built up.

17. Respondents deny that this proceeding is in the interest of the public, as claimed in the complaint, and allege on the contrary that said proceeding is actually (though not intentionally) in the interest of a few private individuals, competitors of the so-called "blenders," and that its tendency and effect, if sustained, will be to injure and exploit the consuming public for the benefit of private individuals. Respondents insist that the practice described in the complaint do not substantially tend to affect the public to its injury; deny that this proceeding falls within or is covered by the Act of Congress creating the Federal Trade Commission; and deny that the Complainant, Federal Trade Commission, has jurisdiction of this proceeding.

18. Respondents submit that Section 5 of the Federal Trade Commission Act, and the procedure thereunder, violate the Fifth Amendment to the Constitution of the United States, in that said Federal Trade Commission is not and cannot be impartial, since it acts both as plaintiff and judge in the same proceeding, and because its findings, however erroneous, and however opposed to the weight of evidence, are binding and conclusive on review if supported by any material evidence, and thus a full review by an impartial tribunal is denied, and the litigants before said Commission are thereby deprived of due process of law.

Respondents further submit that the Complainant, Federal Trade Commission, after ex parte investigation, has prejudged this case on questions of fact, which are of vital, if not controlling importance.

Respondents do not charge any bad faith, or intentional unfariness, on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law in this proceeding.

Answer to Amended Complaint

And now having fully answered, respondents pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville Trust Bldg.
Nashville, Tennessee.

United States of America
BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D., 1929.

Commissioners:
Edgar A. McCulloch, Chairman,
Garland S. Ferguson, Jr.,
C. W. Hunt,
William E. Humphrey,
Charles H. March.

In the Matter of	Order
Royal Milling Co., et al.,	Docket No. 1597
Tennessee Grain Co.,	Docket No. 1598
Nashville Roller Mills,	Docket No. 1599
Snell Milling Co.,	Docket No. 1600
Watauga Milling Co., et al.,	Docket No. 1601
State Milling Co., et al.,	Docket No. 1602
Cherokee Mills Co., et al.	Docket No. 1604

The above-entitled matters coming on for consideration by the Commission on the suggested solutions of the issues raised in the complaints filed July 12, 1929, by Thomas H. Malone, counsel for respondents, and the Commission now being fully advised in the premises,

It Is Ordered that said suggested solutions be considered at the time of final argument on the merits.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

STIPULATION OF COUNSEL.

In the above styled cause it is stipulated and agreed between Baldwin B. Bane, Esq., counsel for Federal Trade Commission, and Thomas H. Malone, counsel for respondents, and subject to the approval of the Federal Trade Commission:

I. That all evidence taken in the case of Francis J. McCarthy, doing business under the names of Watauga Milling Company, etc., (Docket No. 1601), may be considered as part of the evidence herein.

II. That the matters hereinafter covered by further stipulation in this cause may be considered in said cause of Francis J. McCarthy, doing business, etc. (Docket No. 1601), so far as they may be material to the general issues raised by the pleadings.

III. That in addition to the evidence in said cause (Docket No. 1601) the following additional facts are stipulated with reference to this cause:

1. That said business was begun in 1902 by one R. C. Lindsey (otherwise known as Dick Lindsey), who operated under the trade name "Royal Milling Company."

2. That in 1917 this business was bought by respondents John McGraw and E. A. Glennon, who paid for the trade name or good will of said business the sum of $7,500.00; that said partners have since operated said business under the same name—"Royal Milling Company."

3. That said partnership is engaged in making "self-rising" flour, and also what is described in the testimony of respondent Francis J. McCarthy (in Docket No. 1601) as "processed" flour—said operations being conducted along the same lines and by machinery of the same type as that employed and used by the respondent Francis J. McCarthy.

4. That said McGraw and Glennon also operate under the trade names "Richland Milling Company" and "Empire Milling Company."

5. That the brands put out by said respondents under the name "Royal Milling Company" are as follows:

"Log Cabin"—"Standard Patent Self-rising."
"Xtra Good"—"Fancy Patent Self-rising."
"Security"—"Best Patent Self-rising."
"Royal"—"Superlative Patent Self-rising."
"Delightful"—"Superlative Patent Plain."
"Clover Leaf"—"Extra Short Patent Plain."
"Silver Dawn"—"Extra Short Patent Self-rising."
"Martha White"—"Plain and Self-rising"—"A Special Cake or Pastry Flour."

Stipulation of Counsel

6. That the brands put out by respondents under the name "Empire Milling Company" are as follows:

"Best Yet"—"Standard Self-rising."
"Mammy's Pride"—"Best Self-rising Flour."
"Four Roses"—"Superlative Self-rising."
"Aviator"—"Superlative Plain Patent."
"Royal Crest"—"Plain Special Flour for Special Trade."

7. That the brands put out by said respondent under the name "Richland Milling Company" are as follows:

"Red Ball"—"Special Patent Self-rising Flour."
"Tri-Sum"—"High Patent Self-rising Flour."
"Pla-Safe"—"High Patent Plain Flour."
"True-Blue"—"Superlative Self-rising Flour."
"Victor"—"Superlative Plain Flour."

8. That said partnership, in carrying on its business, buys and sells in Interstate Commerce.

9. That of the flour which goes through the processes already described in respondents' plant, and is afterwards sold to the trade, approximately 50% is "self-rising" and approximately 50% is "processed."

10. That said partnership, in 1929, did a business which in barrels amounted to 92,343, and in dollars and cents $682,422.84.

11. That the replacement value of respondents' plant and machinery is approximately $40,000.00.

12. That exhibits 1 to 13 inclusive show letters or post-cards written by said partnership, and sent out to customers, or prospective customers, under the dates shown by the respective exhibits.

13. That exhibits 14 to 27 inclusive, to this stipulation, show the bags, sacks, brands, etc., used by said partnership in carrying on its business.

14. That said company markets its product through brokers, and also by salesmen, and also by mail. No solicitation is made of wholesalers or jobbers—the business going direct to the retail trade.

15. That under date of February 20, 1929, a letter was addressed to "Royal Milling Company," signed by Web Woodfil, Chief Trial Examiner of Federal Trade Commission, enclosing a proposed stipulation. Said letter is marked exhibit 28 hereto, and said proposed stipulation exhibit 29. These exhibits are subject to the same objections, ruling of the Examiner, and exceptions made

with reference to the offer of similar exhibits in Docket 1601, R. p. 1066, et seq., respondent's exhibits for identification 71 and 72.

16. That under date of July 12, 1929, a proposed solution of the controversy between respondents and the Federal Trade Commission was offered—the nature of said proposed solution, and the action of the Commission with respect thereto, being set out in the testimony of the witness, Vernon S. Tupper, page 1070, et seq., of the record in Docket No. 1601.

IV. That the Federal Trade Commission wrote these respondents, and also the respondents in Docket 1598 (Tennessee Grain Co. and Tennessee Milling Co.) Docket 1599 (Nashville Roller Mills), Docket 1600 (Snell Milling Co.), Docket 1601 (Watauga Milling Co.), Docket 1602 (State Milling Co.), Docket 1604 (Cherokee Mills), Docket 1607 (Old Hickory Mills), Docket 1617 (Southern Milling Co.), and also Mero Mills, (which it is stipulated, is the same Mero Mills mentioned in the testimony of the witness Thomas E. Snell in Docket 1601 at pages 934, et seq., of the record), a letter similar in form to respondents' exhibit 68, as shown in the testimony of the witness Vernon S. Tupper in Docket No. 1601, at page 1039 of the record, requesting from each a list of twenty-five customers; that nine of the above named concerns complied with said request; and that from the names so furnished the Federal Trade Commission obtained the twenty-five merchants or dealers, who were examined in chief on behalf of the Commission in said cause, Docket No. 1601, with the exception of the following two witnesses—Walter Cunningham and C. S. Ragland.

V. That to prevent the expense, delay and trouble incident to a separate trial of this cause, the same may be heard and determined by the Commission in connection with said cause of Francis J. McCarthy, doing business, etc., Docket No. 1601,—it being agreed that the evidence introduced in said cause (Docket No. 1601) may be looked to by either party as if taken in this cause, and with respect to these respondents, except in so far as changed by this stipulation, and that the record therein shall constitute part of this record.

Thomas H. Malone,
For Respondents.
Baldwin B. Bane.

United States of America
BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D. 1931.

Commissioners:

C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of John McGraw and E. A. Glennon, Co-partners, doing business under the names of Royal Milling Company, Richland Milling Company and Empire Milling Company, and individually.	Docket 1597

FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon respondents above named charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearances and having filed their answer herein, a stipulation as to the facts was entered into between counsel for the respondents and counsel for the Commission in which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondents and argument by counsel for the Commission and counsel for the respondents, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

Paragraph One: Respondents, John McGraw, and E. A. Glennon are partners conducting business under the names Royal Milling Company, Richland Milling Company and Empire Milling Company. In 1917 re-

spondents bought the business of one R. C. Lindsey who operated under the trade name Royal Milling Company. They later adopted and used also the names Richland Milling Company and Empire Milling Company. Respondents' place of business is located in Nashville, Tennessee. Respondents are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. They then pack the flour in bags under brands of their respective trade names, and sell it to dealers located in various states of the United States, but particularly in the Southeastern States. Respondents buy the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tennessee, from which point they ship the flour to their customers. In the course and conduct of their business respondents are in competition with other co-partnerships, individuals and corporations engaged in the sale of flour in interstate commerce.

Paragraph Two: Respondents put the flour which they buy from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda, and phosphate. If it is not to be self-rising a little phopshate is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry it to the reel or sifter, from whence it goes after being sifted into hopper bins, and thence to the packer where it is packed into bags of the desired sizes. There is no grinding process in the operation. Respondents sell from five to eight brands under each trade name, but each brand does not represent a different grade or quality of flour. It takes from ten to fifteen minutes to run the flour through the equipment used by respondents. The cost of the machinery in such a plant as the respondents', having a capacity of 3,000 barrels a day on a twenty-four hour run is approximately $20,000 to $25,000, and the total investment approximately $150,000 to $200,000. The replacement value of respondents' plant and machinery is approximately $40,000.

Findings as to Facts and Conclusion

Paragraph Three: The grinding of wheat into flour has developed by various steps until today it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphate, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a success of grindings between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using different numbers of breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A five break mill has eighteen spans of rolls and thirty-two separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middlings, offals, bran, shorts, etc. The bolting or sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of Flour." Bolting or sifting has been done by the concerns grinding the wheat into flour in this country from the earliest times. The number of boltings or siftings differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the

flour, thus improving its baking qualities, and whitens its. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moisture content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour can not be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades: patent flour, which means that part of the stream of flour which is left after taking off a greater or less percent of the inferior flour —it is the best flour made by the mill; straight flour, which means one hundred per cent flour, all the flour that is extracted from the wheat berry; clear flour is the flour taken off by the mill after the patent flour has been removed; low grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern grinding wheat into flour with a capacity of about 3,000 barrels a day is about $600,000, and the total investment between $1,000,000 and $1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from eight hours to fifty or sixty hours, due to differences in time required for tempering the wheat. But if the tempering time is excluded, the time required is from a half hour to one and a half hours, depending upon the number of breaks and boltings used by the concern.

Paragraph Four: Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising

flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready for use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about seventy-five years ago. The self-rising flour business was originated or begun in Nashville, Tennessee, by a Dr. Owsley. He operated under the name Owsley Flour Company and sold through the Southeastern States. This company was succeeded by the Ford Flour Company about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating the mixing of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondents sell in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondents and who do not represent themselves as mills or milling companies, or manufacturers of flour.

Paragraph Five: Nashville, Tennessee, is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually grinding wheat into flour and selling in the Southeastern territory.

Paragraph Six: Respondents do not have or maintain a laboratory for testing or analyzing the flours which they buy or sell. They are regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it. By this test the characteristics or qualities of the flours, such as gluten content, protein content, moisture content, starch content, etc., can not be determined. Only the relative appearance of the two flours can be gotten from such a test, and this is of little value in approximating even the grade of the flour, because practically all concerns grinding wheat into flour add phosphate and a bleaching agent to the flour on the mill stream. Different concerns add different amounts of such, and a greater amount of bleaching

makes a lower grade of flour appear better. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. A difference in the granulation of the flour and in the amount of the total break of the wheat berry contained in the flour affects very materially the appearance of the flour. The quality and characteristics of the flour can not be determined by the paddle test, and respondents by this test can not maintain uniformity of brands or grades. The grade and quality of all flours are determined by their chemical analysis. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondents' plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not called or known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

Paragraph Seven: Respondents represent themselves as "Royal Milling Company. Daily Capacity 1, 500 Barrels;" "Richland Milling Company. Manufacturers of High Grade Flour. Daily Capacity 1,000 Barrels;" "Empire Milling Company. Manufacturers of Highest Grade Flour. Daily Capacity 1,500 Barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

> "No jobbers, salesmen, brokers, bookkeeping. Half your profit is in the buying! Order direct from the mill and save this yourself. We offer delivered your depot, basis 24 pound sacks, our high grade flour, as follows."

And:

> "The scarcity of soft red wheat of good milling quality is becoming more acute each day, and with a good demand for flour we can see nothing to prevent prices from working higher. It has always been our policy to give our customers opportunity to take care of their requirements before an advance, and believe you will find it to your advantage to book your needs for at least 60 days now. * * *

Findings as to Facts and Conclusion

"Nothing can be better than the best, and we handle only the best. This is not a mere dream, but an actual fact—based on chemical analysis, baking tests, and the statements of those who sell and use our flour. * * *

"When you buy from us we save you money, as we do not sell through salesmen, brokers or jobbers, but go direct to the retail grocer and sell him at jobbing prices and you will find it much to your interest to buy on this plan."

Paragraph Eight: The containers for respondents' flour have on them the trade name under which they are selling the particular flour, such as "From Royal Milling Company," "From Richland Milling Company," "From Empire Milling Company." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Silver Dawn. Superlative Self-Rising Flour," "Clover Leaf. Superlative Patent Flour," "Royal. Best Patent Self-Rising Flour," "Aviator. Highest Patent Plain Flour," "Best Yet. Standard Patent Self-Rising Flour." "Security. Self-Rising Flour," "Martha White. Highest Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags, labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Paragraph Nine: When the term "mills" or "milling company," or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather

than from one that bought the flour from a grinding concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern a more uniform product or get a better product for less money because of the elimination of a middleman's profit or costs. Many persons, dealers and consumers, have been buying respondents' flour believing them to be, because of the use of such words or terms in the names under which they do business and because of their representation that they are "Manufacturers of Flour," a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as milling, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondents' use of such words or terms in the names under which they do business and their representation that they are manufacturers of flour tend to and do divert trade to respondents from concerns actually grinding wheat into flour and selling in the States in the Southeastern section of the United States and from concerns engaged in the same character of business as respondents and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business or represent that they are manufacturers of flour.

CONCLUSION.

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

C. W. Hunt,
Chairman.

(Seal)
Dated this 16th day of
April, A. D. 1931.
Attest:
Otis B. Johnson,
Secretary.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 16th day of April, A. D. 1931.

Commissioners:

C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of	
John McGraw and E. A. Glennon, co-partners doing business under the names of Royal Milling Company, Richland Milling Company, Empire Milling Company and individually.	Docket 1597.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It Is Now Ordered that the respondents, John McGraw and E. A. Glennon, co-partners, doing business under the names of Royal Milling Co., Richland Milling Co., and Empire Milling Company, as co-partners and individually, their representatives, agents and employees and the representatives, agents and employees of each of them, do cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words "Milling Company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or oth-

erwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by them or either of them under such title or name, or by or through any such representations.

It Is Further Ordered, that the respondents above named within sixty (60) days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

By the Commission. Otis B. Johnson,
(Seal) Secretary.

TESTIMONY IN DOCKET 1601, IN THE MATTER OF WAUTAGA MILLING COMPANY, ET AL., MADE A PART OF THE RECORD IN DOCKET 1597 BY STIPULATION.

Before the

FEDERAL TRADE COMMISSION

In the Matter of Francis J. McCarthy, doing business under the names of Watauga Milling Company, Modern Milling Company, F. J. McCarthy Milling Company, Southern Flour Mills Company and Star Mills.	Docket No. 1601.

Nashville, Tennessee, Jun 26, 1929.

Met pursuant to notice, 10:00 o'clock A. M.

Before:

William W. Sheppard, Examiner.

Proceedings

Appearances:

Baldwin W. Bane (Washington, D. C.), for the Federal Trade Commission.

Thomas H. Malone (Nashville, Tennessee), Attorney for the Respondents.

PROCEEDINGS.

Examiner Sheppard: Are you ready, gentlemen?

Mr. Bane: Yes, sir, we are ready, if it please your Honor.

Mr. Malone: Yes, sir, we are.

Examiner Sheppard: I will proceed to open the case. This is the matter of Francis J. McCarthy, doing business under the trade name of Wautauga Milling Company, and several other trade names set out in the caption. Commission's Docket No. 1601. This case has been ordered for trial by the Federal Trade Commission in Nashville, on June 26th, 1929, at 10:00 o'clock in the morning. I have been sent, gentlemen, to hear the facts in the case on both sides, and, Mr. Malone, just as soon as the Government closes its case, I expect you to go on.

Mr. Malone: We will go on with the understanding that if I am called away owing to my engagements in the appellate courts, I may have an adjournment in the hearing for that purpose.

Examiner Sheppard: Are there any motions? If not, you may proceed.

FRANCIS J. McCARTHY was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. McCarthy?

A. Nashville, Tennessee.

Q. And what is your business, Mr. McCarthy?

A. Manufacturing of self-rising and process flour and feed.

Q. Where is that business located?

A. At 51st Street and Centenial Boulevard, West Nashville.

Q. How long has your business been located there?

A. About one year.

Q. Centenial Boulevard, is it?

A. Yes.

Q. Where was it located before it was located at 51st Street and Centenial Boulevard?

A. Chestnut Street and N. C. & St. L. Railway.

Q. Is that the same as 400 Chestnut Street?

A. That is right.

Q. How long have you been in this business, Mr. McCarthy?

A. Something over twenty-five years.

Q. Where, in Nashville, all the time?

A. Nashville.

Q. Do you operate the business under your own name?

A. I operate, I own the business and it is usually designated as the F. J. McCarthy Trading as Wautauga Milling Company, etc.

Q. How long have you been operating this business in your name, as F. J. McCarthy and trading under these various names?

A. About eight years.

Q. Since 1921?

A. 1921, yes.

Q. In 1921, where did you start in business?

A. I had an office in the Independent Life Building, and the flour was processed at N. C. & St. L. Railway and I forget the name of that cross street there.

Q. In 1921, when you began operating under your own name, you had an office in the Independent Life Building?

A. Yes, sir.

Q. And you blended or compounded the flour in another plant?

A. Yes, I forget the name of the cross street.

Q. What name or what names did you use then?

A. Only the Wautauga Milling Company.

Q. The Wautauga Milling Company. Prior to 1921, when you went in business for yourself, as I understand it, what business were you in?

A. In the same business.

Q. In what capacity or with what concern?

A. From 1918 to 1921, I was a partner in the firm of J. H. Wilkes & Company.

Q. Where was that firm located?

A. We were located at 17th Avenue North and N. C. & St. L. Railway, Nashville, Tennessee.

Q. And what was their business?

A. Their business was manufacturers of feed and flour.

Q. When you say manufacturers of feed and flour, do you mean by that, that they ground the grain into feed and ground wheat into flour?

A. As manufacturers of feed I mean that they ac-

tually ground this feed into the various kinds of poultry feed, horse feed, dairy feed, whatever it was; and flour, I mean that they took the raw product which they received from the mills and put it through a manufacturing process and turned out an entirely distinct and different flour from the raw flour they did buy from the mills.

Q. Did they grind the flour in any way?

A. They did not grind the flour, but put it through the same process the mills put it through in making self-rising flour.

Q. They made self-rising flour?

A. Yes.

Q. And only self-rising flour?

A. No, they made processed flour.

Q. In 1921 you went into business for yourself?

A. Yes, sir.

Q. Is J. H. Wilkes Company still in business?

A. Yes, sir.

Q. In Nashville?

A. Yes, sir.

Q. In the same business?

A. Yes, sir.

Q. Prior to 1918 what was your business, Mr. McCarthy?

A. From 1908 to 1918 I was Sales Manager and Manager of the Ford Flour Company of Nashville.

Q. 1908 to 1918, Sales Manager and Manager?

A. Sales Manager in the beginning and Manager during the last two years.

Q. What was the business of the Ford Flour Company?

A. The Ford Flour Company are pioneer manufacturers of self-rising flour in the south.

Q. Is the Ford Flour Company in Nashville?

A. Yes, sir.

Q. And they sold that flour throughout the South?

A. Do you want me to explain it somewhat in detail?

Q. Explain what in detail?

A. About the business of the Ford Flour Company?

Q. If it is necessary to answer that question where they sold, yes. If it is not necessary, I would rather you would answer the question.

A. Well when I became sales manager of the Ford Flour Company in 1908, their business was confined mostly around Nashville and a few points on the Atlantic coast, such as Buford, South Carolina, and points like that. I introduced the use of self-rising flour through-

out the entire south, and increased the business from a few hundred to more than 1,700 barrels of flour per day.

Q. You were formerly an employee of the Ford Flour Company?

A. I was an employee, but also had a share of the profits.

Q. A share of the profits, depending upon the volume of business?

A. Yes, sir.

Q. Prior to 1918, were you engaged or connected with any business here in Nashville?

A. Yes, sir.

Q. What?

A. During that period I was connected with the Tri-State Milling Company of Nashville.

Q. What was the business of that concern?

A. They were also manufacturers of flour.

Q. What you mean by that is, that they bought flour and compounded it into self-rising flour and compounded it in to other flours, or ground the wheat?

A. They also had mills and also, as with the mills at the present time, had a blending plant in connection.

Q. They had a blending plant in connection with the mill, in which they ground the wheat into flour?

A. Yes, sir.

Q. You, I understand, adopted when you started into business the name Watauga Milling Company, first?

A. Yes, sir.

Q. And what other names did you operate under?

A. At the present time I operate under the name of F. J. McCarthy Milling Company.

Q. When did you adopt that name?

A. I imagine about 1912.

Q. 1912?

A. Yes.

Q. 1912. I understood you started in business for yourself in 1921.

A. That is true. I beg your pardon, I should say about four years after I started in business, that would be in 1925.

Q. 1925?

A. Yes, that is right.

Q. All right, sir, what other names do you operate under?

A. Southern Flour Mills Company.

Q. Southern Flour Mills Company?

A. Yes, sir.

Q. When did you adopt that name?

A. Well, I should imagine about 1926.

Q. 1926?

A. Yes, sir.

Q. What other names do you operate under?

A. Modern Milling Company.

Q. When did you adopt that name, Mr. McCarthy?

A. About the same time, about 1926.

Q. 1926. Now, what other names do you operate under?

A. No others.

Q. Don't you operate under the name of Star Mill?

A. I formerly operated under the name of Star Mills.

Q. What do you mean by "formerly," when?

A. Well, say in 1927 and the latter part of 1928.

Q. From 1927, do you mean, including the year 1927, or you began the first of 1928 and ran only a part of 1928?

A. Yes, we began in 1927, that is I gave up the ownership in the Star Mills the latter part of 1928.

Q. You ran about two years?

A. About a year and a half.

Q. Why did you cease operating under the name of Star Mills, Mr. McCarthy?

A. The Star Mills was the name of a flour company that had operated here for a number of years through the Liberty Mills of this city, and their owners lost all of their fortune and the Liberty Mills became bankrupt; then a younger man, a son of the original owner, I allowed him to do business under the name of Star Mills.

Q. You allowed him to do business, what do you mean?

A. The Star Mills had gone into honorable bankruptcy, paid all their debts and this young man was trying to get back on his feet and make a living, and I gave him the opportunity to do so by operating under the Star Mills.

Q. What did you have to do about that?

A. Well, one of my good-natured impulses, I suppose.

Examiner Sheppard: You mean you backed him?

A. Yes, sir, I backed him.

Q. You did not have a right in the name of Star Mills?

A. He had a right.

Q. It was the name he and his father had been operating under.

A. Yes.

Q. What connection did you have with it?

A. I supplied the money and gave him a share of the profits.

Q. And he sold the flour?

A. He sold the flour and I packed it for him.

Q. It was your business and he was really an employee of yours, is that right?

A. Yes, sir; that is right.

Q. Why did you cease operating under the name of Star Mills?

A. Well, he, when he got so he could operate the business himself, I turned it over to him without payment.

Q. Is he now operating under that name?

A. Yes, sir; he is now operating under that name.

Q. Was there a mill, grinding wheat into flour, located in Nashville, known as the Star Mills, Mr. McCarthy?

A. No, sir.

Q. Ever?

A. Never.

Q. Now, will you please explain to us, Mr. McCarthy, the way your business is conducted, that is, I mean, what you do in getting and preparing the flour which you sell under these various trade names that you have given us?

A. Well, in the beginning, when I receive into my plant the raw flour, which I purchase from the mills on a surplus basis—

Q. Now, as you go along, when you receive into your plant the flour that you purchase from the mills on a surplus basis?

A. Yes, sir.

Q. Will you please explain what you mean by saying you purchase the flour from the mills on a surplus basis?

A. What I means is, there is a tremendous overproduction of flour in the United States, and the mills, in order to enable them to operate twenty-four hours per day, a great many of the larger mills will sell a part of their surplus flour at cost, or less than cost, in order to keep their plants running on a twenty-four hour schedule, and enable them to manufacture flour at a lower cost per unit than if they only operated ten hours per day, or part time. If they operated ten hours per day, or part time, it would cost them more to make the flour, and they could not turn out as uniform quality of flour as

if they operated twenty-four hours a day. Consequently, it has been the custom for years for mills to sell their surplus flour to what is termed "blenders." They do this for the reason it enables them to make lower prices on all flour they turn out. It also enables them to sell to a larger market. When selling to the larger bakeries, for instance, they sell three months to six months ahead.

Q. Now, I have no objection to your putting that in, if you will tell me how you run your business. I have gone back over your business from 1908 to date, but I do not yet find you making flour. If you will confine yourself to my questions, how you operate your business, not how some one else operates their business. I want to know how you buy now, the reasons that move you or move them?

Mr. Malone: I would like to make this suggestion, that counsel asked for an explanation of what he meant by the surplus of flour. The answer is strictly responsive.

Mr. Bane: I certainly asked what he meant by buying on the surplus basis, and I don't think that question calls for the reasons of the millers.

Examiner Sheppard: We want everything in about that. Go ahead, Mr. McCarthy, and tell me in your own words, and in as much detail as you want, in answer to Mr. Bane's original question, as to how you conduct your own business.

A. You do not want me to go into the reasons why the mills find it necessary to sell their surplus flour?

Examiner Sheppard: I think there is enough on record. I get the point, they sell their surplus flour to the blenders?

A. Yes, sir.

Examiner Sheppard: All right, go ahead.

A. When this flour is received by me in the plant in the raw state, I at once store it in well aired, dry places for the purpose of letting it become matured or aged. This maturing or aging process not only improves the quality of the flour, but also improves its color and makes it more susceptible to absorbing the self-rising ingredients in the flour. It also has the effect of taking out a good part of the moisture content of the flour, which figures about 13½ per cent in raw flour. And then I take two or more different kinds of this flour, selected

for their various qualities and put them into my self-rising or process flour machinery. I then take the self-rising ingredients for making the self-rising flour, after the ingredients have been scientifically prepared, in the right proportions according to tested formula, and the raw flour and ingredients are put into the self-rising machinery, where it is subjected to a most thorough agitation and shaking up by means of spirals and buffet plates, which agitates the flour thoroughly, and also has the effect of taking out a good part of the moisture content and improving the quality of the flour. After it has been thoroughly mixed or blended in this way and aired, it goes into a bin. From there it goes into what we call the Draver. This is the same machinery used by the mills in making self-rising flour. From the Draver it is drawn up to another level of the mill in cups or buckets through an elevator shaft, according to the method used by the mills. It then goes to the spirals, where the flour is subjected to a most thorough shaking or vigorous agitation. Every particle of the flour is subjected to this treatment. This has the effect of thoroughly rebuilding the flour, and also has the effect of taking out any foreign matter that may be in the flour when it is received from the mill. All of this foreign matter is taken out and thrown to one side and the good flour thrown into the bins. This method guarantees the texture of the flour, gives a more fluffy texture, makes the flour more susceptible for absorbing the self-rising contents, and turns out a better grade of flour.

Q. That is, than the flour you started with?

A. Than the flour I started with. It then goes from the bins into the hoppers, through the packers where it is packed and placed on a moving conveyor, through the sewing machine and into the car. What we claim we do, Mr. Examiner, is we take a raw product, which is not in itself merchantable product, then. You cannot take the plain raw flour and make bread without adding the ingredients, unless you make unleavened bread. We take this raw product and put it through this manufacturing process and turn out an entirely different product from what we had in the beginning. This product has lost its moisture content, and it will make more bread and better bread than the flour we purchased from the mill. It will also make flour of more uniform quality.

Q. Now, you refer to that self-rising machinery in the description of the way you carry on your business. What do you mean by self-rising machinery? What is it?

A. It is the same identical machinery as is used by the mills in making self-rising flour.

Q. That does not tell me what it is, I am not a miller. What is it?

A. I can show you.

Q. Suppose I ask you?

A. Yes, sir.

Q. Is not it a container or bin, whatever you might call it, for mixing the flour?

A. The first machine that we use in making the self-rising flour, that is, we have a number of these machines, is what is known as the twelve barrel mixer.

Q. That is, you put twelve barrels of this flour you purchase from the mills which grind the flour, into this?

A. Yes, sir.

Q. And there it is stirred up and mixed together, is that correct?

A. Yes, sir, that is right.

Q. And there you add the ingredients to the flour which gave it the so-called self-rising qualities, is that correct, and mix this up with it?

A. That is right.

Examiner Sheppard: Mr. Bain, right there let us get into the record what are these ingredients, so that I can understand.

Q. What are the ingredients?

A. The ingredients, with the exception of salt, are the same identical ingredients that the house-wife uses in taking the so-called plain flour and making it into bread or biscuit, phosphate, soda and salt.

Q. Do you add salt?

A. Yes, sir.

Q. I did not understand the answer. I thought you said with the exception of the salt?

A. I said the same ingredients as baking powder manufacturers sell, except salt, in other words, it is the same thing from which they make baking powder.

Q. Then you add that, stir it all up together?

A. Yes, sir.

Q. After that flour comes out of the mixer, which is the proper term for it, isn't it?

A. Yes, sir.

Q. What do you do, what is done with it?

A. It goes into a bin.

Q. It goes into a bin?

A. Yes, sir.

Q. From that bin, where does it go?

A. From that machine it goes into the machine called the "draver."

Q. What?

A. The draver, d-r-a-v-e-r.

Q. What kind of machine is that?

A. It is a machine with worm gears, etc., which forces the flour through cups into the elevator shafts, the same machine as the mills use.

Q. In other words, sends the flour from the bin into cups on a shaft that runs up to the floor above?

A. Yes, sir.

Q. It is really a part of the elevator?

A. That is right.

Q. After the flour comes out on the next floor, after coming out of the mixer and carried out of the bin to the next floor, what is done with it?

A. After coming from there to the next floor, other cups force it into what we call the reels.

Q. The reels are really the sifter?

A. Yes, the reels are really the sifter.

Q. Takes out any dirt that may have gotten into it, any string, piece of paper, anything of that kind?

A. That is right.

Q. From that reel or sifter, where does the flour go?

A. from the reel or sifter, it goes into the cups again, and into the bin above the packers.

Q. From that point it is let down by spout into the bags, from which it is packed?

A. Into the packers, from which it is packed into bags.

Q. And the packer is merely a large bin, which runs the flour into the bags, or allows it to run in?

A. The packer is a machine which takes the flour and forces it into the bags.

Q. Then it is sewed up in bags and ready for sale?

A. That is right.

Q. Does that process you describe with reference to the self-rising flour, or is that the same process you use on flour which you might be putting out, that is not self-rising?

A. Yes, sir.

Q. Except that you do not add in the mixer the self-rising ingredients you described?

A. We add the phosphate in the mixer.

Q. But not the other ingredients?

A. No, not the other ingredients.

Q. That is way you treat the flour you sell?

A. Yes, sir.

Q. You do not at any stage grind or reduce the flour?

A. Yes, sir, I should say we do, when it goes through the machinery, when it is agitated by the buffent plates and so thoroughly agitated in the reels up stairs, I think it reduces the particles of that flour, according to the term milling.

Q. It is in no way ground?

A. Yes, it is ground in a way when it goes through the cups and wheels.

Q. That merely takes it in the cups and up the elevator?

A. Yes, sir.

Q. And you do not break up the particles of the flour?

A. It is bound to break up the particles of the flour.

Q. How?

A. When it goes through the worm gears.

Q. That is for the purpose of putting it in the cups, Mr. McCarthy and not to break the flour down?

A. The flour is thoroughly re-built when it goes through the reels, the same method the mills use.

Q. All of the method you describe is a similar method to that the mills use that grind wheat into flour?

A. The same method that grinding mills use in making their self-rising flour.

Q. And it is the same method they use in making a patented flour?

A. That is right.

Q. In other words, this is a process, or a part of the process used by the mill that grinds the wheat, in making up the flour that it sells, is that right?

A. The mill that sells the flour cannot make the flour from the grain without it. They are compelled to use the same machinery we do.

Q. After grinding the wheat, they put it through the same process that you do?

A. That is right.

Q. Now, Mr. McCarthy, where do you sell this flour?

A. Throughout the entire southern states.

Q. Shipping it from Nashville?

A. Yes, sir.

Q. From your plant at Nashville, Tennessee?

A. Yes, sir.

Q. And you only have the one plant, now?

A. That is right.

Q. And at that one plant you mix up all this flour, and ship from that one plant all of the flour that you sell

under these various trade names that you have given us?

A. That is true.

Q. Do you employ salesmen in selling the flour throughout these states?

A. I don't employ salaried salesmen. A great part of my output is sold direct to the merchants.

Q. How are the orders obtained?

A. The orders are obtained through the mail, our system of quotations.

Q. That is, through business solicited by means of letters and correspondence sent by you to the purchaser?

A. That is right.

Q. Do you also employ some salesmen on a commission basis?

A. Yes, sir.

Q. Those salesmen travel throughout the entire territory?

A. That is right.

Q. Have you any competitors in this business, Mr. McCarthy?

A. Yes, sir, the southeastern millers, the western millers and millers beyond the Ohio River, as well as the self-rising and plain manufacturers of flour in Nashville and in the south.

Q. By southeastern, you mean those in the southeastern states who grind wheat into flour, and western and those around Nashville who do the same thing, and use the same process you do?

A. Yes, sir, Atlanta, Macon, North and South Carolina, everywhere, we are all in competition.

Q. The distinction I mean to make, I probably did not make myself clear; you mean you are in competition with those concerns that grind wheat into flour, and also with those who do the same thing with flour that you have described, is that correct?

A. Well, if you come down to the final analysis, I am not so much in competition with the mills who grind the flour.

Q. Yes. Why, don't they sell flour?

A. Yes.

Q. You do too, don't you?

A. Yes.

Q. You both sell plain flour, that is, as contrasted with the self-rising flour, don't you?

A. We sell what is called processed plain flour.

Q. You sell what you call your patented flour?

A. Yes, sir.

Q. The mills sell patented flour?

A. Yes, sir.

Q. The mills sell self-rising flour?

A. Yes, sir.

Q. And you sell self-rising flour?

A. Yes, sir.

Q. And throughout the same territory in which you sell?

A. Yes, sir; but if you will allow me to state, the so-called grinding mills, when they sell flour in the south, they have salaried salesmen. These salaried salesmen sell flour to the wholesale grocers or jobbers, and the wholesale grocers and jobbers in turn employ salesmen to sell the flour to the merchants, and when the flour gets to the merchant I don't consider that as competition from that source, as there are so many profits added I have no trouble selling the merchants.

Q. Don't some mills sell direct to the retailers?

A. Very few.

Q. Some of them do?

A. Some of the smaller mills.

Q. Don't some of the larger mills sell direct to the retailer?

A. I do not know of any large mills which sell direct to what we call the retail merchants. They sell in car loads to concerns in position to buy in car loads, but not to the small merchants.

Examiner Sheppard: I gather then, Mr. McCarthy, that in competing with those mills who grind wheat into flour and sell just to the jobber and wholesaler, and who in turn sells to the retailer, you can undersell those, and consequently don't consider that competition?

A. No. That is right.

Examiner Sheppard: I see. Go ahead.

Q. You claim that you can undersell those who sell —or you cannot undersell the mill that grinds the wheat, but can undersell the flour coming from the mill grinding wheat when it reaches the retailer, because it goes through the hands of the wholesaler before reaching the retailer?

A. Yes, after adding the expense of selling to the wholesaler and the expense of the wholesaler selling to the retailer.

Q. It enables you to go direct to the retailer and sell

flour at cheaper prices than the mill that grinds the wheat into flour around through the wholesaler?

A. That is right.

Q. The Ford Flour Company is a competitor of yours?

A. Not any more. The business of the Ford Flour Company has almost disintegrated.

Q. It was a competitor of yours?

A. Yes, sir.

Q. It sold self-rising flour and plain flour compounded in the same way that you do?

A. It did, and had a big business and it was finally absorbed by a big bank, and then by a big mill, then it lost its business.

Q. Do you know the Dobson Grocery Company?

A. I know of them.

Q. Do they blend flour like you do?

A. Not as I know of.

Q. Now, when you started in business, Mr. McCarthy in 1921, were there any concerns in this territory in which you sold, blending self-rising flour as you describe that you do?

A. Yes, sir.

Q. What were those concerns?

A. In this city there was the Nashville Roller Mills, the Royal Milling Company, the State Milling Company, the Colonial Milling Company. I have a list of those.

Q. The Ford Flour Company was here too, was it not?

A. The Ford Flour Company at that time I think was absorbed, no, that is right, the Ford Flour Company was in existence.

Q. It is still in existence?

A. It has been absorbed by the Liberty Mills.

Q. Is not it still a corporation?

A. They sell under that name, but it is owned by the Liberty Mills.

Q. They still sell flour under that name, prepared by them as you prepare your flour?

A. No, I do not suppose they prepare it like I do mine now.

Q. In what way do they prepare it?

A. The Liberty Mills or any other mill that is compelled to mill their own flour, they take out what they have orders for under their brands, and that flour for which they have no orders, they are compelled to pack into what we call 140 pound jute bags, for instance, the Liberty would run 45 per cent patent, 45 per cent clear

and 10 per cent low grade, ordinarily. They would have orders for their top patent, 45 per cent, which they would bag into their bags under their brands, and then would come an accumulation of 10 per cent low grade and 45 per cent clear. I do not know just how they bag for the Ford Flour Company at the present time, but I know they cannot do it like I do.

Q. Why?

A. They have not the space in which to store the flour to properly age it and mature it.

Q. But their processes are practically the same as yours, except possibly the storage?

A. That is right.

Q. And they put that out under the name of the Ford Flour Company?

A. That is right.

Q. And those concerns you named that were in business when you went in, were selling throughout the southern territory, the same territory you sold in then and now?

A. Yes, sir.

Q. Mr. McCarthy, where do you buy this flour?

A. We buy, rather I buy from that section of the country where it can be bought most advantageously.

Q. By that you mean what?

A. By that I mean, if we can buy flour from the Pacific Coast to best advantage, than from Illinois, Indiana, Missouri, or Kansas, we buy from the Pacific Coast.

Q. To better advantage, you mean cheaper?

A. The price and quality considered, yes, sir.

Q. Do you buy from the same concerns all the time?

A. No.

Q. Sometimes you may buy from the Pacific Coast, is that correct?

A. That is right.

Q. Sometimes you buy from the mills in Indiana?

A. Yes, sir.

Q. Sometimes in Illinois?

A. Yes, sir.

Q. Sometimes from the mills in Missouri?

A. Yes, sir.

Q. Sometimes in Kentucky?

A. Sometimes, yes, sir.

Q. Sometimes from the mills in Michigan?

A. Yes, sir.

Q. Sometimes from the mills in Tennessee?

A. Yes, sir. Sometimes as far east as Maryland.

Q. Depending upon where you find a mill with sur-

plus flour that you can buy advantageously, that is, at a price you think is an advantageous price, is that correct?

A. That is right.

Q. Not buying from any same source through any period of time?

A. Well, some mills we buy from almost continuously.

Q. Then, you get the rest that you mix in with that from various sources?

A. That is right.

Q. In addition to those names you have given us under which you now operate, and including the Star Mill under which you did operate, do you operate, or have you operated since you have been in business under any other name?

A. I pack flour for other concerns, just like a great many other people in that line of business do.

Q. But, do you put the name on them, one of the names under which you operate, on that flour?

A. No.

Q. Whose name do you put on it?

A. For instance, if I should pack flour, say for the Star Mills, their brands are shown on the sacks.

Q. And it indicates that it is packed by the Star Mills, that the Star Mills are the ones from whom the flour comes?

A. I am not familiar with the markings on the sacks, I cannot say.

Q. My question is, have you operated under any other name than those you gave us, the Watauga Mill, F. J. McCarthy, Southern, Modern and Star Mills?

A. I am interested in other mills, but I do not own them. For instance, I am interested in the United Flour Company, for whom I pack flour.

Q. For whom you pack flour, the United Flour Company?

A. Yes, sir.

Q. Do you own a part of that business?

A. Yes, sir.

Q. You pack flour for them, and they sell it as a brand of the United Flour Company?

A. That is right.

Q. Now, have you, Mr. McCarthy, in your business operated under any other names than those you gave us? Have you conducted your business under any other names?

A. Outside of those for whom I pack flour, these

names, Watauga Milling Company, F. J. McCarthy Milling Company, Southern Flour Mills, Modern Milling Company and formerly the Star Mills.

Q. The Modern Mills, you say?

A. No, the Modern Milling Company.

Q. I thought you used both?

A. No, sir.

Q. Those are the only ones you operate under?

A. Yes, sir.

Q. Now, will you give us the brands you put up under the name Watauga Milling Company?

A. "Dixie Maid," self-rising.

Q. When you say "Self-Rising," that describes no other brand of flour, and is not another brand?

A. That describes the kind of flour.

Q. The Dixie Maid is a self-rising flour?

A. That is right. Dixie Maid and Sun Beam self-rising, Supreme and Diamond Chrystal are processed.

Q. That is what you call the plain flour?

A. Yes. Do you want all?

Q. Yes.

A. Sweet Daisy, self-rising; Cotton Blossom, plain flour, and one I believe they call Smiles.

Q. A self-rising flour?

A. Self-rising, yes, sir.

Q. And those are the brands you use as the Watauga Milling Company?

A. Yes, sir.

Q. What brands do you use under the name of Modern Milling Company?

A. Bulletin, self-rising, Rosalind plain, Ever-Ready self-rising, White Fawn, plain.

Q. Do you remember whether under the Modern Milling Company you also have a brand called Eagle?

A. That is true, the White Eagle brand is self-rising.

Q. All right, those under the name of the Southern Flour Mills?

A. Southern Rose self-rising, Sweet Liberty, plain; Lady Luxory, self-rising, I forgot the other name.

Q. Red Wing?

A. Red Wing is one, yes, sir.

Q. What is that, self-rising?

A. Yes, sir, self-rising.

Q. White Star?

A. No, that is plain.

Q. Give us the brands you pack under the name of F. J. McCarthy Milling Company?

A. Superb, self-rising, Glow Light, self-rising, Quality, plain, Belvedere, plain, Select, plain.

Q. Give us the brands of the Star Mills?

A. Lion, plain and self-rising.

Q. Both plain and self-rising?

A. Yes, sir.

Q. Was Fan Tan another?

A. Yes, sir.

Q. Is that plain or self-rising?

A. Self-rising.

Q. Sky-High another?

A. Yes, sir.

Q. Both plain and self-rising?

A. Yes, both plain and self-rising.

Q. Is there a difference, Mr. McCarthy, between each of those brands that you have named, which are put up under the various names?

A. No, some are identically the same grade and quality of flour.

Q. Just different brands?

A. Yes, sir. Some are different grades, of course in the different brands.

Examiner Sheppard: Are all these various brands made in the same unit of the mill?

A. They are not made in the same series of mills, Mr. Examiner, not at the same time, made different times.

Q. They are made at the same plant and through the same machinery?

A. Yes, sir.

Examiner Sheppard: In other words, I want to understand fully, you have only the one mill.

A. We have only one plant, but we have three or four different series of self-rising machinery, three or four different units.

Examiner Sheppard: I see, three or four different units?

A. Yes, sir.

Examiner Sheppard: Are they all under the same roof?

A. Yes, sir.

Examiner Sheppard: I just wanted to differentiate in my own mind whether or not you had different units in different parts of town?

A. No, sir, they are all operated under one roof.

Examiner Sheppard: All right, that closes that up. Go ahead.

Q. You moved to your present location, I believe you said, about a year ago?
A. Yes, sir.
Q. Why did you move down there?
A. Well, the building in which I was located was not suitable for my requirements.
Q. That is, it was not large enough?
A. No, sir, it was not large enough.
Q. This other is a larger building?
A. Yes, sir.
Q. How many barrels of flour could you turn out at your old location a day?
A. Why, we figured on a twenty-four hour run we could turn out in the old plant about 2,400 barrels per day.
Q. At the old plant was all flour prepared as you have told us?
A. Yes, sir.
Q. At this new plant, how much can you turn out per day?
A. About 3,000 barrels per day.

Examiner Sheppard: Is that, as a matter of fact, your daily capacity now?

A. Yes, sir.

Examiner Sheppard: Three thousand barrels per day?

A. Three thouasnd barrels per day.

Examiner Sheppard: Is that process flour?

A. Either process or self-rising.
Q. That is, putting your flour through the process you have described?
A. Yes, sir.
Q. You can put out, your capacity, operating twenty-four hours per day, is 3,000 barrels per day, and was it the old plant 2,400 barrels?
A. Yes, sir.
Q. That is your theoretical capacity?
A. It is actual.
Q. Do you operate twenty-four hours per day?

A. I have at the old plant.

Q. Do you at the new plant?

A. No, our competitors made it necessary for me to operate during the day time.

Q. You actually,—Mr. McCarthy, your business is not one that is ordinarily and commonly understood as milling, is it?

A. I consider we are millers, that we actually manufacture flour.

Q. You do?

A. I consider we are entitled to the name mill, that we are entitled to the name manufacturer, and this belief has been strengthened by the decision of the Interstate Commerce Commission, giving us milling in transit rates on plain and self-rising flour, the same as the mills.

Q. Of course that does not quite reply to my question.

A. Well, one definition of a mill is manufacturing. We consider that we do manufacture, take the raw material and turn it into a finished product, entirely different.

Q. Did you ever put up flour under the name of the Cumberland Mills?

A. No, sir.

Q. Did pou ever put up any flour under the name of the Southland Mill and Elevator Company?

A. No, the Cumberland Mill, if you will permit me to state, is a part of the Liberty Mills of this city, a selling name.

Q. You never used those names?

A. No, sir.

Q. Mr. Bane: Mr. Reporter will you mark these for identification, please.

(Post cards, letters, copies of letters and bills were then marked for identification Commission's Exhibits 1 to 31, both inclusive.)

Q. Mr. McCarthy, did you ever use the term I name, "Waverly Mills"?

A. No, sir.

Q. Are any of these concerns, or these names under which you operate, corporations?

A. No, sir.

Q. They are just trade names adopted by you for the carrying on of your business?

A. That is right.

Q. Have you any different machinery at this new location, than you had at the old?

A. Yes.

Q. What?

A. I think my capacity has been increased, it might possibly have been increased a third. I have not tested it to its full capacity.

Q. Do you put the flour through any different processes?

A. No, sir.

Q. You use exactly the same kind of machinery here that you did there?

A. That is right.

Q. That is, you had the mixer, draver, elevator, reel and packer there that you describe you now have, is that correct?

A. That is right. I would not say it in the singular, I would say it in the plural, I have reels, packers, mixers, etc.

Q. Yes, but I mean the same machinery?

A. Yes, sir.

Q. Mr. McCarthy, I hand you commission's exhibits for identification, one to 31 inclusive and ask you if those are samples of the solicitation of orders sent out by you for flour sales?

(Passing Commission's Exhibits for identification 1 to 31 inclusive, to witness for examination.)

Examiner Sheppard: Just take your time and look over them, identify them to your own satisfaction. If you find any you do not identify, lay them aside.

A. Take the Star Mills, that was sent out by me, but they are not now.

Q. The date on there identifies it, doesn't it?

A. Yes, sir.

Mr. Bane: Mr. Reporter, will you please mark these bags as Commission's Exhibits for identification?

(The bags were marked for identification, Commission's Exhibits Nos. 32 to 56, both inclusive.)

A. I will say the circulars, letters and quotations gotten out by the Watauga Milling Company, the F. J. McCarthy Milling Company, the Modern Milling Com-

pany and Southern, were the ones authorized by me, but I never authorized the quotations sent out by the Star Mills, that is, I did not know anything about their contents.

Q. That is, those of the Star Mills were sent out at the time that you were selling flour under the name of Star Mills, is not that correct?

A. It would be more correct to say I was permitting Mr. Pilcher to sell flour under the name of Star Mills. He had complete charge and sent out the quotations, handled all the business in connection with his part.

Q. He was an employee of yours, selling flour on a commission basis, is that correct?

A. He could be so considered, but I gave him full latitude in running the business.

Q. But, he was an employee of yours, selling flour on the commission basis, is that correct?

A. That is correct.

Mr. Bane: I offer those in evidence, Mr. Examiner, as Commission's Exhibits one to 31 inclusive.

Examiner Sheppard: Any objection?

Mr. Malone: None.

Examiner Sheppard: Let them go in, Mr. Reporter, as Commission's Exhibits 1 to 31.

Q. Now, Mr. McCarthy, I hand you Commission's Exhibits 32 to 56, inclusive, for identification, and ask you to tell us, please sir, what those are?

A. All of them are brands put out by my different companies, except the Star Mill's brands.

Q. That was a brand put out by you?

A. Yes, sir.

Q. They are bags in which the various brands of flour sold by you are put out, aren't they?

A. That is right.

Q. In what size bag do you bag your flour?

A. Six, twelve, twenty-four, forty-eight, and ninety-six pound bags.

Q. And also in barrels?

A. And in barrels.

Q. Do the bags of all sizes contain on them, for the particular brand, the same wording that is on these bags for each brand?

A. I did not quite catch that?

Q. In other words, is the first brand, "Dixie Maid," that is in a six pound bag, is not it?

A. Yes, sir.

Q. Do the other sizes in which you pack, contain the same wording for the "Dixie Maid" brand, in the twelve, twenty-four, forty-eight and other sizes you bag?

A. Yes, sir.

Q. Is that true of each of the other brands?

A. That is right.

Q. And the barrels that you pack, the barrels have the same brand, the same wording that is on the sacks for that particular brand?

A. Practically the same thing, yes, a label, paper label that goes on top of the barrel.

Q. And that paper label contains the same wording?

A. Practically the same, I do not remember exactly.

Q. Does that label contain the name of the particular company under which you happen to be shipping the flour?

A. Yes, sir.

Q. Contains it as it does here, from the Watauga Milling Company, the Modern Milling Company, etc.

A. Yes, sir.

Q. They do?

A. Yes, sir.

Mr. Bane: I offer those in evidence, Mr. Examiner, as Commission's Exhibits 32 to 56, both inclusive.

Examiner Sheppard: Is there any objection?

Mr. Malone: No objection.

Examiner Sheppard: Let them go in.

Q. I notice, Mr. McCarthy, in some of these letters that were introduced through you, that you have upon the side of the letter, the statement, "Prices include 25 cents bbl. commission," what does that mean?

A. That means, when we sell through a broker who handles our account, as a side line, that those prices include for that broker 25 cents a barrel commission.

Q. On each of these, then, on which that appears, the concern to which you are selling is a broker?

A. Yes, sir.

Q. That 25 cents commission on a barrel is not given to the retailer?

A. No, the 25 cent commission per barrel is not given to the retailer, but we sell the retailer direct without the commission.

Q. What?

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A. We sell the retailer direct without a commission.

Q. You do sell, then, as well as direct to the retailer you do sell through brokers and commission merchants?

A. Yes, sir.

Q. You also sell to the wholesalers, don't you?

A. Not now.

Q. When did you stop that?

A. The wholesaler stopped last year when they found they could buy cheaper from the western mills than they were from me.

Q. Up to that time you did sell the wholesaler?

A. I sold to anybody who would buy it at my prices.

Q. You still try to do the same thing to-day?

A. I don't try the wholesaler.

Q. You would not sell through the wholesaler, is that it?

A. If he would pay the same price as the retailer, I would.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Cross-examine him.

Cross-examination.

Questions by Mr. Malone:

Q. Mr. McCarthy, why do you use the words "mills" or "milling" in these various trade names?

A. I use the words "Mills" or "Milling" in these various trade names for the reason that I consider the manufacture of self-rising flour is a milling process; also the manufacture of process flour. This belief is strengthened by the fact that the Interstate Commerce Commission granted us the same milling in transit privileges or rates on self-rising and blended flours as to the mills.

Mr. Bane: By granted, here, you mean?

A. Yes, sir, here.

Q. Explain for the Examiner what you mean by this milling in transit decision?

Mr. Bane: Mr. Examiner, of course that is objectionable. The decision speaks for itself. He has referred to the decision I do not think it at all proper to have the witness, a layman on the stand, interpreting a decision.

Examiner Sheppard: That is true, but Mr. Mc-

Carthy evidently has knowledge of it. In order to save time and trouble, I will let him testify about it.

Mr. Bane: Go ahead and testify about that. How did that start? If you had any part in it, any connection with it, tell us all about it?

A. The business of the self-rising flour manufacturers at Nashville and other sections of the south have been built up on what is known as "Any Quantity Freight Rate." Since the beginning of the business it has encountered a storm of opposition from interested parties.

Q. What business?

A. The self-rising flour business. Shall I give a history of that, or just—

Examiner Sheppard: No, just confine yourself to the question asked.

A. Go on and tell about the Interstate Commerce Commission decision?

Q. Yes, go on and tell about the Interstate Commerce Commission proposition.

A. The business of the self-rising flour manufacturers had been built up on what is known as "Any Quantity Freight Rates," that is to say, the railroad would permit the manufacturers of self-rising flour in Nashville to stop the movement of a shipment of flour in Nashville, manufacture it into self-rising flour and ship it back to the south on the balance of the through rate. In other words, in shipping flour to the south, we could ship in lots of any size at practically car load rates, through the milling in transit arrangement. This is the same privilege which the grinding wheat mills have.

Q. Now, was there any effort made by anybody to take that privilege away from the Nashville self-rising flour industry?

Mr. Bane: I object to that, as not being in issue in this proceeding.

Examiner Sheppard: I will let him answer.

A. A most vigorous effort was made by the Southeastern Millers Association, through an action known as the Macon case, brought against the Aberdeen & Rock Fish Railroad and other railroads in 1916. This petition was to take away from the manufacturers of flour in Nashville, what was known as the re-shipping privilege.

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Q. The self-rising flour manufacturers, you mean, in Nashville?

A. I mean the self-rising flour manufacturers in Nashville. A large fund was raised by the Southeastern Millers Association for that purpose and the greatest legal talent in the country was employed—

Mr. Bane: May I ask one question. Are you a member of the Southeastern Millers Association, or were you at that time?

A. No, sir.

Mr. Bane: Were you an officer in it?

A. No, sir.

Mr. Bane: I do not think what the Southeastern Millers Association did is competent, except what he knows.

Examiner Sheppard: Mr. McCarthy, I am allowing you to testify on this line, because, as I said awhile ago, I thought you had knowledge of it.

A. Yes, sir.

Examiner Sheppard: If you do not—

A. I have knowledge of the opposition on the part of the Southeastern Millers.

Mr. Bane: Certainly if he has, and is not a member of the Southeastern Millers Association, he ought to show how he got the knowledge.

Q. Mr. McCarthy, without going into whether a fund was raised or not, do you know, as a matter of fact, that the Southeastern Millers Association employed counsel and intervened in that proceeding, and vigorously contested the right of the Nashville self-rising flour manufacturers, to the milling in transit privilege? Do you know that?

A. Yes, sir.

Q. Mr. Bane: Just a moment. I object to that as outside of the issues of this case.

Examiner Sheppard: Let him answer.

A. To my knowledge the Southeastern Millers Association intervened in that case, employed counsel and

vigorously prosecuted the case through their secretary, Mr. J. B. McLemore.

Q. Now, Mr. McCarthy, of course without undertaking to give us the contents of a legal opinion, state whether or not in general the contention of the Nashville manufacturers of self-rising flour was sustained, and whether or not their milling in transit privilege was continued as a result of that decision?

A. As a result of that decision the Interstate Commerce Commission instructed the railroads to put into effect the milling in transit privileges, or rather to keep in effect the milling in transit or re-shipping privilege granted the manufacturers of self-rising flour of Nashville.

Examiner Sheppard: All right, that is enough on that question.

Mr. Malone: Now, we have here, Mr. Examiner, the advance sheets of that decision of the Interstate Commerce Commission, and subject to exception I will offer them as an exhibit.

Mr. Bane: The Commission will take judicial notice of the decision.

Mr. Malone: All right, strike the offer.

Q. Now, you say, that that decision strengthened you belief that you were engaged in a manufacturing and a milling process. If I understand you then, the Southeastern Millers Association and the other people contesting your privilege, denied that you were either a manufacturer or engaged in a milling process, is that a fact?

A. That is a fact. They submitted evidence at the hearing trying to prove that we were neither manufacturers or millers, in fact that we were not anything other than ordinary blenders of flour, that is what they tried to prove, but we were not to be classed as manufacturers.

Q. Or millers?

A. Or Millers.

Examiner Sheppard: When was that decision?

A. October 1916.

Q. Now, you were then engaged with the Ford Flour Company as manager?

A. Yes, sir.

Q. Did you testify and take an active part in that proceeding?

A. Yes, sir.

Mr. Bane: May I enter my exception to all testimony with reference to the decision?

Examiner Sheppard: Yes. I thought you understood that I overruled the objection and gave the exception.

Q. Now, you were asked about using different trade names, Mr. McCarthy, what was your purpose, your reason for doing that?

A. In the first place—

Examiner Sheppard: Go into that with some detail. I want to know why you use so many names.

A. Yes, sir. In the first place, it has been the general custom in the flour trade, for manufacturers or mills to operate under different names. I could give you an instance, the Liberty Mills of this city, operate under the name of the Cumberland Milling Company, the Model Milling Company, the Nashville Milling Company, etc.

Q. Is the Liberty Mills a grinding mill?

A. They were a grinding mill.

Mr. Bane: They are, aren't they?

A. They are, yes, sir.

Q. Is there any other line of industry now, that you know of that uses different trade names for the purpose of putting up the same article?

A. Well, all of the concerns, a great many of the concerns engaged in my same line of business, manufacturers of self-rising flour and process flour, operate under different trade names.

Q. What about the fertilizer companies, if you know anything about them.

Mr. Bane: That is objected to as incompetent and immaterial to the issues.

Examiner Sheppard: It is only interesting to me, Mr. Malone, as a comparison. But, I don't know, there is no proof here to show me that the same customs apply in the fertilizer industry as in this case. I shall bar that question.

Mr. Malone: Note an exception. The purpose, if I may state, is to show it is a legitimate trade custom.

Examiner Sheppard: I see, but I want to confine it to the flour industry.

Q. Now, you do know, as a matter of fact, that both the manufacturers of self-rising flour and grinders of wheat, millers do follow this custom of marketing their product under other names, is that correct?

A. Yes, sir. I can give you examples, if necessary.

Q. Give some more examples, please?

A. Take the Dunlop Milling Company of Clarkesville, they operate under the name of Super Flour Mills, the Colonial Milling Company of Nashville, operate under the name of Volunteer Milling Company, and concerns in my same line of business—

Q. Just a minute, what about Ballard & Ballard of Louisville?

A. Ballard & Ballard of Louisville operate under another name, as well as Iglehart Brothers of Evansville, Indiana.

Q. They are people who grind their own flour?

A. Yes, sir.

Q. So, as I follow you, it is a common thing, both with the wheat millers and the so-called blenders, to follow this same custom of operating under different names?

A. Yes, that is right.

Examiner Sheppard: Are you a blender, do you call yourself a blender?

A. I call myself a manufacturer of self-rising and plain flour, we use blending in our processing.

Q. Now Mr. McCarthy, is there any difference in your process of manufacture, to these other parties that are referred to as blenders, if so, point out the difference?

A. Yes, sir, those engaged in the manufacture of plain and self-rising flour have the same identical processes that I have. If they are engaged in the manufacture of what we call the process flour, both the mills and the so-called blenders in my line of business, use the same process.

Q. Would you refer to your process as a blending process?

A. No, I would refer to it as a manufacturing process.

Q. Tell me the difference between them?

A. For instance, Mr. Imbs of the Imbs Milling Company, told me a short while ago while in my office that in connection with their grinding mill they also found it

necessary to build a large plant to blend. These mills have a big trade with the bakers and cracker manufacturers, and an export trade. In order to serve their trade satisfactorily they found it necessary to draw flour from the Pacific Coast, Kansas, Texas, Southern Illinois, the Surplus, and take two or more flours and blend them together.

Mr. Bane: Where did you say you got that from?

A. Mr. J. F. Imbs, of the J. F. Imbs Milling Company, of Bellville, Illinois and St. Louis.

Mr. Bane: Of course that is hearsay. I move to strike.

Examiner Sheppard: I understand a certain amount is hearsay.

A. I was giving an example.

Examiner Sheppard: Yes. I will let it stay in the record and give it probative value.

Mr. Bane: But I want to make another objection to that, regardless of what any one else or other mill or grinder of flour may do in conection with his blending, that does not relieve this man, and it is not relevant or material to the issue here, what Mr. McCarthy does. Some one else may do the same thing, but that does not excuse Mr. McCarthy.

Examiner Sheppard: Mr. McCarthy, do I gather from what you have stated, that blenders are certain persons who do certain things to wheat flour?

A. Mr. Examiner, I might state in this way, that as far back as I can remember in the flour business, when I first started, we have had what are called blenders or blending concerns.

Q. That is in wheat flour?

A. In wheat flour, yes, sir.

Q. You do not have any so-called blenders of self-rising flour?

A. People who make self-rising flour consider it a manufacturing process, as distinguished from blending.

Mr. Malone: Mr. Examiner, I may have misled you. Just for the purpose of convenience I am designating the wheat millers, or grinders as millers

and the manufacturers of self-rising and process flour as blenders. I had no specific purpose in using the term.

Examiner Sheppard: I want to find out who the blenders are, as distinguished from the process used by Mr. McCarthy. I have got it now. I understand it.

Q. Mr. McCarthy, we were on the subject of using trade names, and you started out by saying that that was the common practice in the flour business, with so-called manufacturers and so-called blenders.

A. Yes, sir.

Q. Now, what else, what other reason is there?

A. I wish to say for four years I operated strictly under the name of Watauga Milling Company, and used every effort I knew how to secure a large volume of business. I found I was unable to do so for the reason that it is the custom in the flour trade in the south, for salesmen or mills to give one concern in a town or a locality, the exclusive sale of their brand, and also found it was the custom for the salesmen, or rather not a custom, but it is a fact, that salesmen in those particular localities could only sell a small portion of the trade for personal and other reasons. Therefore, by operating under one trade name, through one salesman, employed by the milling concern, you could only secure a small part of the business. In order to secure the volume of business and sell more people in the same town or locality, it is necessary to have other brands, which you could not do unless you had other trade names. It is necessary to have other salesmen under those new trade names. As a result of that, I found it possible to increase my business over 100 per cent, and instead of costing fifty cents a barrel to run the flour through the mill, as it would if I sold a small quantity, the cost of running the flour through the mill has been reduced to less than ten cents.

Q. Is that saving in cost reflected in a saving in price to the consumer?

A. That saving in cost has been reflected in a saving in price to the consumer.

Q. So, if I understand, by operating under the trade names, indirectly benefits the consuming public in reducing the price to them, is that the idea?

A. That is the way it works out.

Q. Now counsel for the Commission asked a good many questions about your plant and your machinery. I

will ask you if you have recently had any photographs taken, showing your plant and machinery?

A. Yes, sir. Last Saturday those photographs were taken.

Mr. Malone: Mr. Reporter, will you mark those for identification?

(The photographs were marked for identification, Respondent's Exhibits 1, 2 and 3.)

Q. Will you identify these as the photographs of which you have spoken?

A. Yes, sir.

Mr. Malone: Respondent's Exhibits 1, 2 and 3 are offered in evidence.

Examiner Sheppard: Is there any objection?

Mr. Bane: No objection.

Examiner Sheppard: Let them go in.

Q. Now, Mr. McCarthy, look at these photographs. I will first hand you Respondent's Exhibit No. 3, and ask you to state to the Examiner what that shows?

A. Respondent's Exhibit No. 3 shows the plant of the Watauga Milling Company.

Q. The present plant?

A. Yes, sir.

Q. Where you are now manufacturing?

A. Where I am located, yes, sir.

Examiner Sheppard: In the City of Nashville?

A. In the City of Nashville.

Q. That is an exterior view?

A. Yes, sir.

Q. Now, I hand you Respondent's Exhibit No. 2, and ask you to explain in the same way, what that shows?

A. This shows a section of the manufacturing machinery, used in the manufacture of self-rising flour, and also packing.

Q. Now, explain to the examiner what machinery that shows, and what it is used for?

A. This lower part of the picture shows where the plain and self-rising flour are put into the self-rising machinery.

Q. You say the lower part of the picture. You are pointing to the—

A. Pointing right there.

Q. I say, you are pointing to the part of the picture

where several colored men are grouped together, bending over flour sacks?

A. Yes, sir.

Q. All right. Explain the rest of that.

A. This part of the picture here shows, well, one of the most vital parts of the picture cannot be shown, as there is a level underneath the floor level.

Q. Well just explain the picture and then tell us about what is under there.

A. After it leaves this machine here—

Q. After it leaves it?

A. After the flour leaves the machine.

Q. Do you mean the raw flour, or with the ingredients?

A. With ingredients, the flour with the ingredients leaves this machine—

Q. And by that, you mean this machine where the colored men are group, stooping over?

A. Yes, sir, where the flour is thoroughly agitated, after it leaves there, it is drawn by cups—no, after it leaves there, it goes into the bin under the machine, where it goes into the dravers—

Q. The dravers are a part of the machinery which you speak of, and of which you spoke in direct examination, which are under the floor and not shown in the picture?

A. Yes, sir.

Q. What do they do?

A. They are a series of gears, worms, that the flour passes through. While we do not claim the flour is ground, as a matter of fact it does, but it is for the purpose of forcing the flour into the cups that go in the elevator shafts.

Q. Where are the elevator shafts, in the up-rights in the picture?

A. Yes, sir.

Q. That flour goes through the elevator shafts where?

A. To the top floor here.

Q. Is that shown on the picture?

A. Yes, partially shown, it passes up to the top of the plant here (indicating).

Q. What is up at the top of the plant?

A. The top of the plant is the reels.

Q. Have you pictures of those reels?

A. Here is a picture of one reel, here.

Q. You point to the square looking object, something

like a table in the left hand, upper left hand portion of the picture?

A. Yes, sir.

Q. And you see some other machinery showing above it. That is one of the reels?

A. Yes, sir.

Q. What is done to the flour there?

A. The flour after it passes under the reel, that reel is rotated, we call it, rotated very rapidly by means of a pulley, the flour is shaken up.

Q. Are the self-rising ingredients in the flour?

A. The self-rising ingredients are in the flour. It is shaken up, agitated and rubber balls pass over the screens in the reel and force out the good flour, leaving in the screen any portion of foreign matter.

Q. What might that be in there?

A. We have seen all kinds of things in the flour. We have seen pieces of steel, twine, all descriptions of things.

Q. Small pieces of wood?

A. Yes, often seen brans and shorts.

Q. That is left in there by accident in the (illegible) process?

A. Yes, sir. And this foreign matter is (illegible) machinery.

Q. Where does the flour go from the (illegible)

A. Into the bin underneath, the (illegible) flour, but the bad flour is (illegible)

Q. You say here, what is (illegible)

A. It is a sort of trough going down here under the steps.

Q. Under the steps in the left hand part of the picture?

A. Yes, sir.

Q. When you say flour, you mean flour in connection with the ingredients that go to make the self-rising flour?

A. That is right. It goes from the reels, after it has been thoroughly rebolted, according to the same manufacturing process of the mill, into this bin, then into the hopper and into the packer.

Q. Now explain to the Examiner your Exhibit No. 1? (Respondents)

A. This is a battery of packers. These bins which I have previously referred to, the flour comes from the reels down into this part, which is called the hopper. Then there is machinery inside of the packers which forces the flour from the hoppers down through the spouts into the sacks, down on the platform. The flour is

packed into the conveyor or moving platform, which takes it to the sewing machine at the end.

Q. A sewing machine, you mean to sew up the sacks?

A. To sew up the sacks, yes, sir.

Q. Now, as I understand these photographs show the actual operation of your mill here within the past few days, the mill in which you are now making self-rising flour and process flour?

A. Yes, sir; that shows the actual process of the mill on Saturday, June 22nd.

Q. Now, I want you, Mr. McCarthy, to explain a little more fully what you mean by process flour, we have had about the self-rising flour. Explain that a little more fully, the process flour?

A. A process flour, I might explain that by going back a little bit. I found from experience, beginning in 1908, that when you add phosphate to the flour, it not only improves its color, but also improves its baking qualities, and it adds that acid to the flour which is necessary in absorbing, equalizing or absorbing the soda when the flour is made into bread.

Q. Just along that line, let me ask if this is true, if the presence of that phosphate in the flour tends to counteract an over-dose of soda, so to speak, placed in the flour by an unskillful housewife or cook?

A. Yes, sir; that is right.

Examiner Sheppard: I understand, Mr. Malone, I am to understand process flour and self-rising flour are synonymous terms?

Mr. Malone: No, sir.

Examiner Sheppard: Bring that out.

Mr. Malone: I will bring it out. We will go on with the process flour.

Examiner Sheppard: Yes.

Q. Tell me just how you would proceed to make up some process flour in your mill?

A. Well, after maturing and aging the raw flour I get from the mill, as previously described, I take two or more different kinds of this flour, selected for their different qualities as I have described before, and put them into the machinery here as I have shown, but instead of adding the self-rising ingredients?

Q. What are the self-rising ingredients?

A. Phosphate, soda, salt, sometimes baking powder with salt. Instead of doing that, we blend it with one-half of one per cent of phosphate, which is the same con-

stituent of all the best baking powders, and this flour would go through the same manufacturing process after the phosphate is added as the self-rising flour, through the machinery I have described.

Q. Right on that point, why do you use two or more flours as your basis there, as your flour basis, why don't you use just one flour?

A. We can get better results, more uniform quality of flour by using two or more flours together.

Q. Explain to the Examiner the difference in the flours, the different elements that go to make the difference, if there is a difference?

A. In the first place, suppose the mill turns out a flour, as a general thing that mill is located in a section where they have to take their local crop, whether it is good, bad or indifferent—

Q. The local crop of wheat?

A. Their local crop of wheat, yes. As a consequence, the flour that they turn out is bound to be good, bad or indifferent. The so-called manufacturer or blender can buy the grade of flour he wants.

Q. I understand that, but now coming to the things that make the flours different, in the first place, what about protein content?

A. Oh, yes, of course all flours are determined by their chemical analysis, such as protein, ash, carbohydrates, etc.

Q. What do you mean by the ash content of flour?

A. The ash content is the fiber in the wheat.

Q. There is a certain amount of wheat fiber after the grinding mills gets through with it, that remains in the finished product of the grinding mill?

A. That is right.

Q. That is what you mean by the ash?

A. Yes, sir.

Q. What about the moisture content, does that vary or not?

A. The moisture content varies in different wheats, different flours, but ususally is about 13½ per cent.

Q. It will average that?

A. Yes, sir.

Q. What about granulation, is that the same in all flours?

A. No, some mills differ in the granulation even with the same grain, some is white, some gray, some dark.

Q. What about the starch content, is that the same?

A. No, some has a greater and some a less amount of starch.

Q. What do you mean by the appearance of the flour?

A. The appearance, after it is manufactured, the texture, etc.

Q. You mean whether it is fluffy, or not?

A. Yes, sir, whether it is fluffy or not.

Q. Now, in making this so-called process flour, you select the two or more of these flours according to the distinct characteristics that each separate brand has to make a product?

A. Yes, sir.

Q. Is that the same in one brand, or different from all of them?

A. It is different from all of them. It is entirely a different and distinct product.

Q. In other words, you put in four different kinds of flour, selected for protein, ash, starch, color, texture and these various elements and get out a finished product which is different from any one of those things you put in there?

A. Yes, sir.

Q. And you say that is a manufacturing process?

A. Yes, sir.

Q. And in doing that, you also add the touch or small percent of phosphate?

A. Yes, sir.

Q. That is for the purpose of counteracting an overdose of soda by the unskillful housewife?

A. Yes, sir.

Examiner Sheppard: Does that make a self-rising flour?

A. No, sir, process flour.

Mr. Malone: That is what we call the process flour. I was going to the self-rising.

Examiner Sheppard: Go right ahead.

Q. Now, tell us how you make the self-rising flour?

A. We go through the same process—do you want to get it as I did before?

Q. I want you to make it clear to the Examiner. He does not know about it like you do.

A. In making the self-rising flour, we mature or age the flour, then place the mixture of matured flour in the self-rising machinery.

Francis J. McCarthy

Q. Just a minute, what is the essential base of self-rising flour, it is 95 per cent flour is it not and about five per cent other ingredients? Is that a fact?

A. That is a fact, yes.

Q. What are the other ingredients that go in?

A. Phosphate, soda and salt.

Q. Whereas the process flour only has the phosphate?

Examiner Sheppard: That is all right. I have got it.

Q. Now, you put this through, with the five per cent added ingredients, you put it through the machinery you have already explained and that comes out as a finished product, known as self-rising flour?

A. Yes, sir.

Q. Is that the same as any one ingredient that went into that product?

A. Entirely different and distinct product.

Q. You insist that is a manufacturing process?

A. Yes, sir, I do insist that it is a manufacturing process.

Q. And a milling process?

A. And a milling process.

Q. Does the texture of that flour change, after it has been through these spirals, buffers, reels you have talked about, does the texture of that flour change?

A. There is an actual change in the texture of the flour, it becomes more fluffy, for instance, more susceptible of absorbing the ingredients, and it loses a per cent of the moisture content.

Examiner Sheppard: What per cent of your output is self-rising flour, and what per cent is process flour?

A. Seventy-five per cent is self-rising flour and twenty-five per cent process.

Q. Now, Mr. McCarthy, when you speak of plain flour in your advertisements to the trade and markings on your bags, do you mean processed flour?

A. Yes, sir, I mean processed flour.

Q. Do you deal in what I call raw flour, flour which is just one kind, as it comes from the mill?

A. No, sir.

Q. Are you in competition with anybody who deals purely in that raw-flour?

A. No, sir.

Q. You started to tell us about some analogy that was in your mind about the manufacture of coffee. If it is not irrelevant just tell us what you have in your mind?

A. I say it is somewhat the same process to that employed by the manufacturer or maker of coffee.

Q. You mean by that, if I understand you—

Mr. Bane: Just a moment, do you know anything about the manufacture of coffee?

A. Yes, I know some about it.

Mr. Bane: Have you ever been in the coffee manufacturing business?

A. I have ground coffee.

Mr. Bane: Do you mean the little mill you set in your lap and turn round?

A. No, not that kind, the larger mill.

Mr. Bane: You mean one that runs by electricity and sets on the grocery store counter?

A. Yes, and I have blended coffee too.

Mr. Bane: That is objected to.

Mr. Malone: I think that is a matter of common knowledge that coffee is blended, the different berries.

Examiner Sheppard: I think I will limit this, Mr. Malone to a complete consideration of flours. That will shorten our record and it will remain within the rules of the Commission.

Q. Now, Mr. McCarthy, just for the record, perhaps this is argument, argumentative, and if it is I understand it is subject to your ruling and exception. I want to ask you this, if you know this is a fact, that manufacturers of pipe smoking tobacco will take a half dozen kinds of tobacco and turn out a brand that is different from any one of them?

A. Yes, sir. They will turn out—

Mr. Bane: That is objected to, Mr. Examiner, as incompetent and immaterial. It don't show what

the manufacturers of tobacco, as they call themselves, what they do with the tobacco, how they prepare it, whether they break it from the leaf, grind it, mix it, combine it, grind or mix it. I do not see how that is material here, unless it is shown what they do to the tobacco.

Mr. Malone: The thought in my mind is this, we are here and one question the Commission will have to determine on is whether it is a manufacturing process. It is insisted in the complaint that we just put in the flour, turn out flour, we are not engaged in a manufacturing process. That is the substance of one part of the complaint. Our insistence is, you put in tobacco and turn out tobacco, but you put in plug cut, Virginia, perrique and Turkish tobacco and turn out a mixture which is a finished product, a manufactured product.

Examiner Sheppard: Yes, Mr. Malone. Mr. Bane's objection goes, I think, probably to the want on the part of Mr. McCarthy for information on those subjects. I believe I will so hold, that is a part of your defense which is applicable to your case, but should be put in by people who know about them, and I shall support Mr. Bane's objection as to Mr. McCarthy on that ground, giving you leave to put that testimony in by people who are competent.

Mr. Malone: Exactly. That is satisfactory.

Q. Now, Mr. McCarthy, do you use the word "mills" in your name, for the purpose of obtaining any advantage over your competitors?

A. No. So far as I was concerned, if I was starting business to-day, I would just as soon start under the name of "flour company," as "mill." My past experience with the Ford Flour Company of ten years is that we built up a bigger business under the name of "flour company" than we have built up under the name of "milling company."

Q. Well, my learned friend may want to know why you are fighting the case for, what is your objection to giving up the name of "mills," now explain that?

A. We object for this reason, I believe I am engaged in a legitimate business an honorable manufacturing business. As this order came from the Federal Trade Commission, as I understood it—

Q. Hold on, we have not had an order, you are thinking about a stipulation?

A. The stipulation.

Q. I am not asking about that.

A. All right.

Q. I am asking about your good-will, and the actual money it would cost if you changed your name, that is the point.

A. In the first place, I want to say, I have never acknowledged myself of being guilty of an illegal practice, or illegal practices, that is my first reason in not wanting to change—

Q. In not wanting to change your name?

A. In not wanting to change the name. The second reason I would not want to change the name is, I have built up a large business under the various trade names of the Watauga Milling Company, etc.

Q. You have acquired a good will?

A. I have acquired a good will under those names, and it would cost any where from Thirty to Thirty-five thousand dollars, on loss of bags, materials, etc., without considering the cost of the good-will if I gave up the business under these names.

Examiner Sheppard: How does he stand in size with other manufacturers?

Q. Let me ask about that. What was your business, say last year?

A. My business for 1928?

Q. That is what I mean?

A. It amounted to $2,400,000.00.

Examiner Sheppard: In your business, Mr. McCarthy, is that a large business, medium size or small business?

A. It is considered a large business.

Examiner Sheppard: It would be considered a large business?

A. Yes, sir.

Examiner Sheppard: That is sufficient. All right.

Q. Mr. McCarthy, did you put in this machinery just for the purpose of making a bluff or trying to deceive somebody, or was it to engage in a manufacturing process, as you deem it, and to turn out a manufactured product? What about that?

A. It is impossible to turn out a merchantable self-rising flour, or merchantable process flour, without the use of that machinery.

Q. What is the cost of that machinery, approximately?

A. I have figured the cost of my machinery in my entire plant at $25,000.00.

Q. The cost of your machinery?

A. The cost of the machinery, installation, etc.

Q. What is your invested capital in that business?

A. The invested capital is in excess of $200,000.00.

Q. What is the size of your building here, can you give the Examiner some idea of the size of your plant?

A. Yes, sir. This plant is 100 feet wide and 300 feet long, and in addition to the main building we have a railroad track on each end of the property, each track 500 feet long, 500 to 600 feet long, also have a covered loading platform 300 feet long and ten feet wide on both sides of the building. It is considered one of the best locations in this section of the country for handling this particular kind of business.

Mr. Bane: That is because of the freight rates into and out of Nashville, and because of the location on the railroad?

A. No, sir, it is because of the fact that this property has on it tracks on each side of the plant, which extend down 600 feet on each side.

Mr. Bane: You said this part of the country. Do you mean to confine it just to the City of Nashville?

A. To the City of Nashville, I should have said.

Q. Mr. Malone, Would it be in your opinion, any advantage to you, to call yourself a miller—by that I mean a grinder of wheat?

A. It would not be any advantage whatever. This has been clearly shown by my experience with the Ford Flour Company. I would give a reason for that, if it is permissible.

Q. Go ahead and state what you have in your mind.

A. Through an experience extending over twenty-five years, I have found the only thing the merchant is concerned about is the quality of service and price, and it does not matter what you call yourself, and I find that it does not matter what kind of brand of flour you have, you

can have any brand, operate under any trade name, but if you have the price and quality and service, you will get the business, a good volume of business.

Q. Now, I believe you started to tell us awhile ago, that the so-called miller, by that I mean the man that grinds his own wheat, has got to absorb his local crop. What is the disadvantage of that?

Mr. Bane: That is objected to, because he is not that kind of miller.

Mr. Malone: He has been in the flour business for twenty-five years.

Mr. Bane: Yes, but making process flour, and not at any time making flour, as I understand.

Examiner Sheppard: Read the question.

(The question was then read by the reporter.)

Examiner Sheppard: I think that is within the scope of your knowledge.

A. The disadvantage in the first place, is that the local crop has to be absorbed, whether the price is above or below the market, he has to take the wheat from the farmers in his particular locality, or see it go to the terminal market. In the second place, that wheat is liable to be of a good quality or a poor quality. In the third place, in so far as it affects the mills in this section, Tennessee is not a wheat growing state, the wheat supply is exhausted in two or three months and that forces the mill to go out to the terminal market and pay higher prices.

Q. As compared with that, how does the so-called blender do?

A. Due to a tremendous over-production of flour of the more than 12,000 mills of the United States, I find I can buy flour any day in the year, cheaper than the mills in this section of the country can grind it.

Q. Well, Mr. Malone, if you know from your experience or observation, if you know what the mills in this section grind for, you can state, if not, just confine your answer within your own knowledge?

A. I can prove it to be a fact to the satisfaction of any reasonable man. I can take the cost of cash wheat on today's market in St. Louis, I can figure the cost of milling the way the mills figure, figure the freight rate to Nashville and can show the cost of this flour f. o. b. the mill, and f. o. b. Nashville, and can show what price I could buy yesterday, and what price the mills get for manufacturing the flour, at their own methods of figuring.

Francis J. McCarthy

Mr. Bane: That, of course, is presuming, Mr. Examiner, that he knows the cost of these mills of converting wheat into flour, that is just the point I am raising. There has nothing been shown by Mr. McCarthy, that he knows what it would cost, the Liberty Mills for example, to convert wheat into flour. I do not know whether he does or not. He does not mill himself.

Q. Do you know the conversion cost of any local millers?

Q. Yes, I know what they state the conversion cost is, and I know what the average conversion is, as shown by the statistics.

Q. Mr. Bane: What statistics?

A. The statistics furnished by the mills themselves. This statement is prepared by a miller, connected with a mill company, a miller who has been in business forty years.

Q. What do you mean by miller, do you mean a person operating a grinding mill?

A. A person operating a grinding mill, employed in that for forty years. I have verified the figures and know them to be correct. These figures show I could buy flour on yesterday cheaper than the miller could manufacture it, laid down in Nashville.

Mr. Bane: How long has that miller been with you?

A. Oh, eight or ten months. He is leaving me now.

Mr. Bane: Is he connected with mills in this vicinity?

A. Yes, sir.

Mr. Malone: That is breaking in a little on the line of examination. We will verify that. Go ahead and explain your calculation.

Mr. Bane: I object to that, Mr. Examiner, as no proper foundation has been laid, incompetent and irrelevant, source from which the statistics on which that is based has not been shown, and has not been given.

Examiner Sheppard: I will tell you, Mr. Malone, my conception of this complaint is not one that would allow an extensive investigation by either you

or Mr. Bane into costs, all this sort of thing. The main, paramount question, as I get it, is not as to what wheat is, or what its manufacture is, or what it sells for or costs, but the simple question of whether or not such a process is manufacturing. And, while I do not want to bar anything that you, as the representative of the respondent in this case thinks is essential to your defense, I do not see how you are going into now, is going to help me, especially because I do not intend to take up the question of cost in the matter. But, if you think it is essential to your case, I will let you put it in.

Mr. Malone: I do not want to put in anything that does not seem to help the Examiner.

Examiner Sheppard: I have found out in trying many, many cases, that when you start to going into this element of cost there is no end to it.

Mr. Malone: May I explain my purpose in suggesting it at all, is this, one theory of the complaint seems to be that by using the term "mills," the respondent represents himself to have a mill to the customer who buys, thereby excluding the middle-man's profit. That term is expressly used in there. And the Commission's theory seems to be that he must pay one profit to the wheat miller when he buys his flour, and then, of course adds on his own profit, so the customer has to pay two profits, and in representing it is a direct mill to customer operation, he deceives the customer. That seems to be the underlying theory of the complaint. My purpose in going into this, and I believe it is already in the record and will be developed more fully, to show he does not pay the grinding mill a profit; but, for reasons that the witness has already developed, and the Examiner permitted to come in, he absorbs a surplus at cost. That was really along that line and to amplify that point.

Examiner Sheppard: As I remember the testimony already given by the gentleman, Mr. McCarthy, he has testified he bought the wheat at cost.

Mr. Malone: Yes, that covers the cost.

Mr. Bane: He testified that he bought his wheat at cost?

A. Flour.

Mr. Bane: Flour at cost. He also testified that he buys his flour from California, Indiana, Illinois,

Maryland, Michigan, Missouri, Kentucky, anywhere he can get the flour.

Examiner Sheppard: I remember.

Mr. Bane: There is nothing in the record to show he knows, and certainly Mr. McCarthy does not know, and if we are going into the element of cost, actually to determine whether or not Mr. McCarthy buys flour at or above cost, we have an interminable thing. When he states he buys his flour at cost from a mill in California, clearly Mr. McCarthy does not know. And the same thing is true when he says he buys flour from a mill in Maryland at cost, clearly he does not know. It is the representation or implication carried, rather than the actual fact charged in the complaint.

Examiner Sheppard: All right, go ahead.

Mr. Malone: I just make this suggestion, Mr. Examiner, of course, if he did not buy his flour at cost, or very close to it, he would not be hurting the wheat millers and probably my learned friend would not be here arguing this case.

Mr. Bane: We are not here on behalf of the wheat millers, but on behalf of the man who thinks he can buy from the mill.

A. May I reiterate that the cost can be proven.

Mr. Malone: We will go into that now. We will offer it later if necessary.

Examiner Sheppard: Yes.

Q. Now, do any of your salesmen, I believe you state you did employ some salesmen, brokers on a commission basis, do any of your salesmen tell your customers that, with your knowledge, consent, or by your procurement, that you are operating a grinding mill?

A. No, sir.

Q. What product is required for this so-called southeastern trade?

A. Well, the southern trade, particularly the people in the south, from time immemorial, have been accustomed to eating hot bread, what we call biscuit, they are biscuit eaters, they have to have flour suitable for making biscuit.

Q. And is this what you call self-rising flour, and also what is called process flour, is that suitable for that bread?

A. Exactly suitable, yes, sir.

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Q. About what proportion, if you know, of the trade in the south and southeast territory, is of self-rising flour?

A. At one time recently it was estimated in the south proper ninety-five per cent of the people use self-rising flour.

Q. It is a very large percentage?

A. A very large percentage, yes, sir.

Examiner Sheppard: Do they use that in preference to the use of baking powder?

A. Yes, sir.

Q. It is a substitute for baking powder?

A. Yes, if I might be permitted to explain, I could explain why that is.

Q. Well, explain why it is, and explain the comparative expense to the examiner of using self-rising flour, and the house-wife buying the flour and ingredients and having to mix her own, explain that.

A. Well, to go back in the beginning, a formula for self-rising flour was discovered by Professor Lebig, about 75 years ago, a German professor. When I began to sell self-rising flour, began introducing it through the entire south in 1908, the people used biscuit flour and used these old negro cooks. The bread was made by rule of thumb, and they had been accustomed to eating that kind of bread. When I began introducing self-rising flour all over the south, when I would make the first trial shipment, it was demonstrated that would make lighter, fluffier biscuit, and the trade was so delighted with it, they tumbled over each other trying to buy this flour. It really revolutionized the bread eating of the southern people and brought about a vast improvement in what is known as biscuit flour.

Q. Explain about the expense, take a barrel of self-rising flour, and compare the expense of that, with a corresponding amount of flour and the same ingredients bought at retail by the house-wife?

A. It requires eight pounds of leavening, that is, eight pounds of baking powder to leaven a barrel of flour. If the consumer uses cheap baking powder, the cost is about eighty cents, if he uses a high grade baking powder, like Royal or Dr. Price's, it would cost about $4.00.

Q. You are not figuring in the salt?

A. I am not figuring in the salt or the soda.

Q. Now, on the phosphate or baking powder, on that

subject alone, there would be a saving of from eighty cents to four dollars a barrel on self-rising flour?

A. Yes, sir; that is right.

Q. Now, Mr. McCarthy, in your opinion is the blender an economic necessity for this trade? And, I do not mean, of course, that you speak as a political economist, but just from a common sense view-point and in the theory that the Federal Trade Commission is conducting this investigation, for the benefit of the public, as alleged in the complaint. Now, how is the blender, so-called blender, manufacturer of self-rising and processed flour an economic factor. Why is he an economic factor in this south or southeast trade?

Mr. Bane: I have no objection to the question. Go ahead.

A. In the first place, it must be an absolute economic necessity, for the reason that most mills have found it necessary to have a blending plant in connection with their business.

Q. You mean to put out self-rising flour?

A. In order to put out self-rising flour and also blended flour. In the second place, it is possible to manufacture flour, or plain flour through a blending plant, a great many times cheaper than the mill can manufacture the flour.

Mr. Bane: That is objected to as no proper foundation has been laid, and as immaterial and irrelevant to the charge in this complaint.

Examiner Sheppard: I will let you answer. Go ahead.

A. Due to the fact there is such a tremendous overproduction in the manufacture of flour through the grinding mills, these mills find it necessary to sell their surplus at cost and less than cost to the so-called blenders.

Mr. Bane: That is objected to as no proper foundation has been laid, and as irrevelant and immaterial to the charge in this complaint. If I have to prove that these mills make a profit on the flour they sell to the blender, as represented by Mr. McCarthy, I have to call the millers from California to Maryland. He has nothing to show, he has not produced anything to show, or to show that Mr. McCarthy has any knowledge that the mills sell at cost or above it.

Examiner Sheppard: I will support the objection on that.

Mr. Malone: I do not know what he means by "middle-man's profit"? If he does not mean that. He has brought in irrelevant matter in the complaint.

Mr. Bane: Not at all. We have not charged in the complaint in any way whatsoever that Mr. McCarthy buys his flour at any price with reference to the cost from the miller. We have charged only, that the use by Mr. McCarthy of certain terms in connection with his business carry an implication—not whether it is true or whether it is false—but that it implies to the man who buys his flour, that a certain thing is true, and they are deceived in connection with it.

Mr. Malone: If I may ask, Mr. Bane, what do you mean by "Middle-man's profit," in your complaint?

Mr. Bane: We use the expression as it is used, terms common to large owners or producers, the idea implying that they are, by buying from Mr. McCarthy, saving the middle-man's profit, regardless of whether that is a fact or not. We are charging that is an implication in the use by Mr. McCarthy, of the words "mill" or "milling" in his name.

Mr. Malone: It strikes me, Mr. Examiner, that if for any reason a person could have such information, as to show that is not true, it would certainly throw some light.

Mr. Bane: There are a great many things that are believed, that are not true. But that does not give him the right to deceive a man.

Examiner Sheppard: There has been no proof so far to show any one was deceived. So, until that is shown, I do not think you need bother about showing the other.

Q. Now, resuming on the point of the blenders' economic function, you stated why he could make a cheap price on this household article of universal consumption in the south, that he could make it, if I understand, by reason of buying his materials in car load quantities, as opposed to retail, he can give this mixture, this self-rising mixture at a much cheaper rate than the house-wife could buy the ingredients and make it, is that a fact?

A. That is an actual, demonstrable fact.

Q. On the next point, how is this mixture made, is it

made more scientifically than the average negro cook throughout the south can make it? How about that?

A. Yes, sir.

Mr. Bane: I object to that. I have always had a high regard for the negro cooks throughout the south, who have a high reputation. To ask what the average negro cooks can do, I don't know.

Mr. Malone: I think that we all have a high regard for certain cooks, Mr. Examiner, but we do get poor ones as well as good ones.

Mr. Bane: Therefore, when you ask about the average, I do not know how Mr. McCarthy will arrive at the average.

Q. What I am asking is, is that more scientifically mixed than a cook is expected to mix in guessing at a pinch of this and a pinch of that, and a cup of this and a cup of that?

A. Yes, sir; self-rising formula we use is one made by a chemist and found to be true and accurate before we use it.

Q. That is another reason?

A. Yes, sir.

Q. Now, explain about the merchants throughout the south, do they buy in car load lots, in great big quantities, as a rule?

A. I should say a large percentage of the merchants, probably over ninety per cent of them in the south,—the south is a consuming section, has no flour mills, I should say over ninety per cent are not able to buy in car load lots, and must buy in quantities of two barrels up.

Q. In your milling in transit privilege and purchasing in quantities, can you save the little merchants?

A. Yes, under our milling in transit rates, we can ship five barrels of flour to the furthest corner of Georgia, almost as cheap as we could in a car load.

Q. And that price is reflected to the consumer?

A. That saving in price is reflected to the consumer.

Q. So, if I understand you, you make a better article and a cheaper article for the consuming public in your self-rising flour—

Mr. Bane: Objected to.

Examiner Sheppard: Let Mr. McCarthy give his opinion. I will give it probative value.

Mr. Malone: It is an opinion.

A. Yes, sir.

Q. Give your opinion?

A. Well, that is my opinion. I could elaborate on it if it is necessary.

Q. Now, Mr. McCarthy, I want to ask what you know about a practice of this kind, that is, with the so-called wheat millers, of buying flour from other millers and turning it into self-rising flour, and putting it out under their own brands in interstate commerce, what do you know about that?

A. To my personal knowledge, I know I am selling from my plant to such a mill who is putting it out, showing it has been milled from his own plant. I know of my own personal knowledge some of the largest mills selling in the southeast have blending plants, that they are buying cheap, low patent flour, and shipping it to their plants, where they make self-rising flour out of it, using soft wheat, low patent flour and showing it has been ground in their mills, when, as a matter of fact, it has been run through a blending plant.

Mr. Bane: That is objected to, and I move to strike, as irrelevant, incompetent and immaterial to the charges. What some miller, or some one else may do, or be doing, has nothing to do with the charges against Mr. McCarthy. If Mr. McCarthy committed a murder, it is no defense to him if John Jones also committed murder. Because some one else is deceiving is no justification for him.

Mr. Malone: There are several cases in the Federal Reports in which a man's so-called competitors, whom the Commission was trying to protect, were shown to have been engaged in exactly the same process themselves, and that was looked on by the Court as depriving the Commission of any right to interfere, to say that it is an unfair practice, because "A" is competing unfairly against "B," when "B" is doing exactly the same thing against "A," it is not a case for the Commission.

Mr. Bane: Mr. Examiner, to reply to that, there is not but one case of that kind presented, that was the Winston Hosiery case. In that case it was stipulated the entire industry, practically, for the past twenty years had been engaged in identically the same practices, that the respondent was then charged with, the Supreme Court of the United States held, that regardless of the fact that all of the competitors were engaged in that deceptive practice to the public,

it was an unfair method of competition and directed the Winston Hosiery Company to cease the practice.

Mr. Malone: If counsel will read Mr. Justice Brandeis opinion in that case, he will see that he put as the main point, that the public was being exploited, that it was an article which was branded all wool, whereas it had only ten per cent wool, and that the public was being exploited by buying cotton underwear at wool prices.

Mr. Bane: That question was not in the complaint. No evidence was shown in the case that the man was paying wool prices for cotton products. It was simply shown he was branding as wool, stuff that had ninety per cent cotton and ten per cent wool, and that they were all doing it.

Examiner Sheppard: Gentlemen, that question has already been decided by the courts, and is a question or argument, entirely. I will let the response to the last question remain in, but limit the question to that.

Q. Now, getting back then, you have stated, and I want to press the point further, that to your knowledge, so-called wheat millers do buy flour, themselves, like you do, and make it into self-rising flour, and put it out without re-grinding?

A. Yes, sir.

Mr. Bane: I object to that and move to strike the answer to that and the previous question.

Examiner Sheppard: I will let the responses stay in. That is my idea of the case, that the wheat grinders, the grinders of wheat, who make flour, also some of them make self-rising flour.

Mr. Malone: Exactly.

Q. You answered yes?

A. Yes, sir.

Q. Mr. McCarthy, from your experience, what does a merchant look to in buying self-rising or processed flour, what factors enter into that competition?

A. My experience and understanding over a good many years, I have found that the merchants only consider quality, price and service. It does not make any difference to him, whether the flour is ground by the mill or put out by the blender, what the name of it is, any thing else, so long as the price, quality and service are given.

Examiner Sheppard: I will ask a question right here, it may shorten things: What machinery does a wheat grinder have, that you do not have?

A. In the first place--

Examiner Sheppard: I mean by that, the wheat grinder who makes flour, who also makes self-rising flour? I will just assume—I will answer that question for you—the additional machinery he has, is such machinery as is necessary to grind up the wheat and turn it into flour?

A. That is right.

Examiner Sheppard: All right, go ahead. And, in addition to that, he has the same machinery that you have to make his processed flour and his self-rising flour?

A. Yes, sir.

Examiner Sheppard: All right.

A. I might qualify that in case of processed flour, Mr. Examiner. It is possible some of the mills can feed in the phosphate in the mill stream.

Examiner Sheppard: In their regular machinery?

A. In the regular machinery.

Q. Now, right in that connection, can the wheat miller feed these ingredients that go to make self-rising flour, into his mill stream?

A. It has been found impracticable by the mill men to do so. As one stated, they are likely to have bran and shorts in their self-rising mixture.

Q. In other words, if I understand you, self-rising flour, whether made by the grinder, miller, or so-called blender, or manufacturer of self-rising flour, is also a distinct process from the grinding process or the making of flour?

A. Yes, sir.

Q. And the so-called miller who makes self-rising flour, must either grind or buy his flour, and then by a separate milling operation, just like you conduct, make it into self-rising flour?

A. That is correct.

Examiner Sheppard: Or he could take his own flour and by certain additions and certain other processes, make self-rising flour?

A. He would have to use identically the same machinery we use.

Examiner Sheppard: That is my understanding.

A. Yes, sir.

Q. And, there are two separate milling operations, in other words?

A. Yes, sir.

Q. Is self-rising flour a large industry here in Nashville?

A. Nashville is the center of the largest center for manufacturing of self-rising flour in the world.

Q. Can you estimate or have you any idea of the amount of that trade here last year?

Mr. Bane: If he has anything to make his estimate worth while, I do not object. I would like to know whether he has the facts, or it is merely speculation.

Examiner Sheppard: Can you get us some figures on that?

Q. Yes, exactly. I will ask you to get the figures and make it exact.

Examiner Sheppard: We are after the figures.

Q. Now, you started to tell us about the Federal Trade Commission offering you a stipulation. Why didn't you sign it?

A. I would not sign the stipulation, because it would imply I was guilty of the charges made.

Q. In other words, they wanted you to admit that you had been engaged in unfair competition, and you would not admit that?

A. That is right.

Q. And, what about the idea that you were not engaged in either milling or manufacturing processes, were you willing to admit that?

A. No, I was not.

Q. What is your opinion about that?

A. I was convinced that we were engaged both in a milling and manufacturing process.

Q. And you will not sign a stipulation that agrees you were?

A. No, sir.

Mr. Bane: I have no objection to his stating he refused to sign the stipulation. I do not see that is material to the issues.

Examiner Sheppard: May be it is not.

Mr. Malone: I am leading up to this, that bears on the whole business.

Q. What possible effect, if you sign an agreement that you were not engaged in either a milling or manufacturing process, what effect do you think it would have on your milling in transit privilege?

A. Here is the effect it will have, the salesmen of all the mills in the south will be instructed to say that these blenders in Nashville have been found guilty by a branch of the Federal Government, that they are nothing but ordinary, common blenders and pack cheap flour.

Q. I am asking about the milling in transit privilege?

A. Oh, you were asking about the milling in transit privilege. I thought you wanted to know the effect. I was judging from past experiences.

Q. Suppose you admit that you are not engaged in either milling or manufacturing, could that, in your opinion, be used against you, as a lever for another effort to take away your milling in transit privilege?

A. Oh, unquestionably. An effort is being made at the present time, just a repetition of the efforts made since 1916 and this would be used as an argument by the opposition.

Mr. Bane: Now, Mr. Examiner, from the first of this series of questions, I wish to object and move to strike as purely speculative. No milling in transit privilege has been taken away, and of course I take the position the decision of the Interstate Commerce Commission does not in any way rest upon, nor did the Interstate Commerce Commission in any way decide that the business carried on by Mr. McCarthy was a milling business. It is purely speculative as to what would happen if he did so and so.

Mr. Malone: I am on the point of showing that these people are not merely recalcitrants, trying to

put the Federal Trade Commission to trouble or trying to be unfair to it, but if they had signed the stipulation, they might have given their enemies a weapon to take out and attack them at a vital point that goes to the basis of the whole industry.

Mr. Bane: It is mere supposition on something which might have happened.

Examiner Sheppard: That is something you may argue before the commission, if you want. So far as the examiner is concerned, I do not know that the gentleman had an opportunity to stipulate. I know most of them had, but whether or not they signed or did not sign is not a question for me, but a straight question of fact. Your motion to strike is granted on that line.

Mr. Malone: I desire to note an exception.

Q. Mr. McCarthy, are there any other so-called blenders outside of Nashville who use the word "mills" in their names, who do not operate grinding plants?

Mr. Bane: That is objected to as incompetent, irrelevant and immaterial.

Examiner Sheppard: I think that is in the scope of his knowledge.

Mr. Bane: It is incompetent, immaterial and irrelevant, what they do as compared to what Mr. McCarthy does.

Examiner Sheppard: He wants to bring out the practice.

Mr. Bane: Is it in defense to the charge of deception on the part of Mr. McCarthy? There are hundreds of other men also engaged in the same line.

Examiner Sheppard: No, I will not consider it from that angle.

Mr. Malone: No.

Examiner Sheppard: I did not think it was for that purpose.

Mr. Malone: It was for that purpose. It was offered for just this purpose, to show the far reaching effect, and economic effect all through the south, and this investigation on it becomes of a very wide scope and affects a very great many people, and also to show, you are not going to presume if it is customary trade practice. It tends to show there is no element of bad faith, no tendency to deceive.

Mr. Bane: The fact it may be a trade practice, or a trade custom, is no defense to the trade practice

or trade custom that is unfair, nor does it tend to prove the trade practice or trade custom.

Examiner Sheppard: Mr. Malone, I will allow Mr. McCarthy to answer your question. I will allow the answer to go into the record. The names of any parties, we are not concerned with the name of any one except the respondent, and if you want to prove the system, you might just ask the particular question as to the number around the country, without mentioning the names.

Q. Then, how many so-called blenders do you know of, without attempting to enumerate all, about how many do you know of in the south, in this territory, competitors of yours, who use the word "mill" and who do not grind?

Mr. Bane: I make the same objection to that question as to the other.

Examiner Sheppard: Yes. Let him answer.

A. About fifteen or twenty.

Examiner Sheppard: We will now take an adjournment until 2:00 P. M.

(The further hearing of evidence in this case was thereupon adjourned until 2:00 P. M. this date; at which time, pursuant to adjournment the further hearing of the case was resumed at the place and in the presence of the parties heretofore mentioned.)

Whereupon, FRANCIS J. McCARTHY resumed the stand, and further testified as follows:

Cross-examination (Continued).

By Mr. Malone:

Q. Mr. McCarthy, have you had a rough sketch prepared, showing the lay-out of your plant, the situation of the machinery, etc.?

A. Yes, sir.

Q. Please mark that for identification.

(The drawing was then marked for identification, Respondent's Exhibit No. 4.)

Q. Is this paper I hand you, marked Exhibit No. 4, Respondent for identification, the plan?

A. Yes, sir.

Mr. Malone: It is offered in evidence.

Mr. Bane: No objection.

Examiner Sheppard: Receive it, Mr. Reporter.

A. Do you want me to explain the drawing?

Examiner Sheppard: Yes, in a few words tell me what it is.

A. Well, after the flour is matured, as I previously explained, and the self-rising ingredients added, it is placed in this mixer for self-rising—

Examiner Sheppard: That arrow is where it goes through, the flour?

A. No, this is where it goes inside the mixer.

Q. That is the arrow at the top?

A. Yes, sir, then the flour goes to the bin after it has been thoroughly mixed.

Q. That is marked "bin" on the diagram?

A. Yes, sir. It goes from the bin to the draver.

Q. It is marked "draver" there?

A. Yes, sir.

Q. All right.

A. From the draver it goes through the cups or buckets and through the elevator shaft.

Q. Describe the elevator and cups?

A. Well, where it goes to the upper story of the plant, and then comes down to what we call the sifter here.

Q. It comes down along the line I will mark here, "A-B," along that line?

A. Yes, sir; to the sifter.

Q. Is that sifter so designated?

A. The sifter is so designated, yes, sir. And from the sifter, the re-cleaned, good portion of the flour comes into this bin, and the foreign material comes through this lock, here.

Q. Which is marked?

A. Strings, lumps, etc. And from the bin it comes into the packer.

Q. The packer is so designated?

A. Yes, sir; the packer is designated.

Mr. Malone: Mr. Examiner, I have not yet had an opportunity to go over the correspondence introduced, and after doing that, if I should wish to recall

the witness for further additional questioning, I would like to have that opportunity.

Examiner Sheppard: You shall have that privilege.

Mr. Malone: I have concluded for the present time.

Examiner Sheppard: Anything further, Mr. Bane?

Redirect Examination by Mr. Bane:

Q. Where is your laboratory, Mr. McCarthy?
A. I have no laboratory now.
Q. You have not had one for about how long?
A. For about fifteen years.
Q. You have not had one for fifteen years?
A. No, sir.
Q. You drew some distinction, I understood you to draw some distinction which the examiner apparently got and I did not, between yourself and a blender. You are a blender, aren't you?
A. No, not in the strict sense of the word.
Q. What are you?
A. A manufacturer of self-rising and processed flour.
Q. Processed flour consists in blending, does not it?
A. Yes, sir.
Q. So as to the processed flour, you are a blender?
A. No, sir.
Q. What?
A. A manufacturer.
Q. How in do you differ from a blender?
A. I differ from a blender in this respect—
Q. That you add phosphate?
A. I add phosphate.
Q. And that is the only way you differ?
A. Not altogether that.
Q. How else?
A. A blender, he makes a specialty of blending different grades of flour from what I do. I blend flour suitable for the southern trade. The blender will blend cheap flour for export.
Q. You blend high-grade flour?
A. Yes, sir; I blend high-grade flour.
Q. Blending does not mean anything else, but mixing?
A. Oh, yes.

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Q. What else does blending mean in the flour industry?

A. In the flour industry, the blending?

Q. Yes?

A. It means considerable more than the manufacture of process flour.

Q. What?

A. Well, this, from time immemorial, there have been blending plants for flour.

Q. In connection with the mill?

A. Sometimes in connection with the mill, but a great many times as separate industries.

Q. Known as blending plants?

A. Yes, sir; known as blending plants.

Q. And not called mills?

A. No, sir; they are not called mills.

Q. Will you tell me how and just wherein you differ from those plants?

A. In the first place, I differ from those plants, because I use more care, in the first place, in selecting the kinds of flour for blending. In the second place, I select the kind suitable for blending and in the self-rising I put in the ingredients. When I make the process flour, I make the same choice selections and go through the same manufacturing process.

Q. A blender who is making a blended flour, goes through the same process as you do?

A. Not necessarily.

Q. Whether necessarily or not, he does?

A. A good many blending plants, it is not necessary to have anything but mixers and packers.

Q. Meaning that they do not sift?

A. No, they do not sift the flour.

Q. A great many blending plants do sift the flour, don't they?

A. Oh, yes, sir.

Q. And a great many blending plants, as you call them, add phosphate?

A. I do not know of any blending plants which add phosphate.

Q. Do the mills add phosphate?

A. Yes, sir.

Q. Do some mills blend the flour, the various grades of flour they make, in order to make a blended flour?

A. Yes, sir.

Q. Don't they use in blending that flour, and the grades they produce, the same machinery you do?

A. Some wheat mills or grinding mills, as you call them, use the same machinery I do.

Q. And blend various grades of flour and call that a blended flour?

A. Yes, sir. That is only a part of their job.

Q. They do make a blended flour that they use the same machinery to make as you do?

A. Yes, sir. I would not say that. I would qualify my answer in this way, they do not use it to make a blended flour in the strict sense of the word. They use it in raising the grade, or in self-rising flour, that is blending.

Q. They could use it and do use it for either one, a blended flour or a self-rising flour?

A. Yes, sir; they could.

Q. They do use it?

A. They may, but not to my knowledge.

Q. Do you mean you know no mill grinding wheat into flour, that makes and puts out a blended flour?

A. Oh, they blend flour, but they add self-rising ingredients and phosphates.

Q. Do you know any that do not sell self-rising flour, that make a blended flour, to which they do not add self-rising ingredients?

A. Not in the mill. I know one that has a separate blending plant they use for that purpose.

Q. A blending plant, what do they call that, what name does it operate under?

A. For instance, it operates under the name of J. F. Imbs Milling Company, St. Louis.

Q. It is in connection with the J. F. Imbs Milling Company of St. Louis?

A. Yes, sir.

Q. Does it operate under the same name as the mill?

A. He told me he operated under the same name.

Q. Who told you?

A. Mr. Imbs, one member of the firm.

Q. They operate that in connection with the mills?

A. Yes, sir.

Q. Then, he is one who does blend flour?

A. Yes, sir.

Q. Then, if I understand you correctly, and I want to understand you correctly, the only difference that can be between you and some so-called blenders, is that you add phosphate, but you do not know a blender that does?

A. No, that is not the difference.

Q. If it is not, give the difference, if there is any?

A. The difference is this, I blend flour suitable for the southern trade.

Q. That is because you blend different flours?

A. I blend different flours, suitable for the southern trade, for consumption by the southern people, who are biscuit users.

Q. Is the question as to whether a man is a blender or not determined by the question of the flours the blending results in? Is that the distinction you make?

A. No, sir.

Q. For instance, if I blend flour for making rolls, I am not a blender, but if I blend flours for making biscuits, I am.

A. No, I am trying to make the difference between the self-rising and process flour makers and the blended flour.

Q. You have not to me. I want you to try to do that.

A. All right. I would say for a long period of time it has been the custom to blend flour for the reasons I have advanced in this testimony, that the blender of flour can draw flour from all parts of the country, and can take these various grades and kinds of flour, blend them together according to a uniform, established grade, and he probably does blend to better advantage than the mill can blend flour.

Q. That is your opinion?

A. Yes, sir, that is my opinion.

Q. Please answer my question. Please tell me the distinction if one exists, between the way you conduct business and the business of what you call a blender?

A. Well, the difference between the way I conduct business and a blender is this, I manufacture flour, blending it, blending and manufacturing for a certain purpose, that is for consumption in a certain trade. Take a blending plant in St. Louis, for instance, or a blending plant in Chicago, they will take flours and blend suitable for export trade.

Q. Therefore they are a blender?

A. They are blenders.

Q. Because you blend a flour suitable to make biscuits, you are not?

A. Not altogether.

Q. That is all I can get out of it?

A. They can take low grades of flour and blend with clear, take clear flour and blend with patent.

Q. You do that, don't you?

A. I do in certain instances.

Q. Then, you are a blender?

A. But, I never blend those together without adding the self-rising ingredients or phosphates.

Q. I understand you to say that some blenders add phosphates?

A. They do, to supply the southern trade.

Q. Wherein do you differ?

A. I blend a higher grade of flour, for instance.

Q. Is the question of whether a man is a blender or a manufacturer of process flour divided by—

A. I want to tell you, that is one of the greatest insults the Southeastern Millers' Association could impose when they called us blenders, because blenders have been known from time immemorial to take cheap flours and blend them and dump them on the export trade, such as the Cuban trade, the Indies and South American trades.

Q. I will say I do not know what is in the trade, but the public in my section, where they talked about flour, called a blended flour, it was supposed to come from a source that had milled it right there. They thought the blended flour was better than that that was not blended. They thought they were getting it put up from a mill that had a reputation back of it, is true?

A. The Southeastern Millers Association and my competitors wanted to bring our business into disrepute, and called us in derision blenders. Those are people who have been in the trade for a number of years making a specialty of taking cheaper grades of flour and blending it and shipping to the countries who use the cheaper flours.

Q. You say some mills blend various grades of flour they get out of various grades of wheat?

A. Yes.

Q. They do?

A. Yes.

Q. They blend various grades of hard wheat flour?

A. Yes.

Q. They blend various grades of soft wheat flour?

A. Sure.

Q. And besides mills grind the wheat and there are others who just buy flour ground from hard wheat and blend the various grades?

A. That is true.

Q. And those who buy flour ground from soft wheat and blend the various grades?

A. Yes, sir.

Q. Among those, are those who add phosphates?

A. Yes. But, I want to tell you—

Q. And they use the same character of material in blending that flour that you use?

A. Not altogether.

Q. All right. What is it in the machinery the blender does not use that you use?

A. Just take an ordinary blender, who is not particular about taking out the waste matter that may be in the flour, he will take the flour just as it comes through the mixers and have it transported on boats to different countries.

Q. Without sifting?

A. Yes, without sifting. Without refining the flour at all.

Q. Do you know any blender selling flour in the United States who makes his flour—who mixes his flour and does not sift it?

A. I don't know of any. I am just saying what they can do.

Q. You do not know any that do?

A. I am just telling you what they can do.

Q. I am asking you if you know any that do?

A. No.

Q. They all sift it after they blend?

A. Not that I know of.

Q. Do you know any who do not?

A. No, I know of some, I would like to answer that question a little more fully.

Q. All right.

A. I knew certain blenders of flour who shoveled it on the floor, would take two or three grades and shovel it up on the floor.

Q. Stir it up with a shovel?

A. They would stir it up with a shovel.

Q. Did they sell in the United States?

A. They sold in the United States.

Q. How long ago is that?

A. About twenty years.

Q. Have you known anybody in the last twenty years, a blender of flour who does not sift the flour after blending?

A. Yes. Not in the last twenty.

Q. Now, I am confining the question to the last twenty years. Have you known any blender of flour who did not, after he blended the grades of flour he bought, did not send it through the sifter?

A. Not within the past twenty years.

Q. Nashville is well located, is it not, Mr. McCarthy,

for the distribution of flour both from a milling standpoint and a blending standpoint; isn't it?

A. It is not so located from a milling standpoint for the reason that Tennessee is not a wheat growing State.

Q. But you can bring in the wheat from the other wheat growing States and mill the wheat into flour here in Nashville and send it out on advantageous rates into the southeastern territory, can you not?

A. A mill in Nashville cannot draw wheat from terminal markets, mill in Nashville and compete with mills who have their local crops and markets.

Q. You mean the stop-over privilege?

A. We have the same stop-over privilege, milling in transit, that they have.

Q. The mills on either the flour that they grind, or the flour that they blend, or the self-rising flour that they make, have exactly the same milling-in-transit rates, and privileges that you have?

A. That is true, yes.

Q. The only distinction, if I understand you correctly, and that is what I want to do, between your plain flour, self-rising flour, and the only difference in the process through which they are put—

A. There is no difference in the process.

Q. There is no difference in the process between the two are put, the only difference exists in a five percent addition of ingredients to make the self-rising, which are not added to the processed flour?

A. That is true. We put in five percent of those ingredients and put one-half of one percent phosphates.

Q. In the plain?

A. In the plain.

Q. And they are both put through exactly the same process in your plant?

A. Yes.

Q. Now, you referred to this Interstate Commerce Commission decision. I do not want to go into that, but I think the decision speaks for itself, but I do want to ask who the parties before the Interstate Commerce Commission were?

A. The suit was brought under the auspices of the Macon Chamber of Commerce.

Q. Against whom?

A. Against the Aberdeen & Rockfish Railroad, they started alphabetically on "A" and went through a long list.

Q. The object on behalf of the Macon Chamber of Commerce to do that, why did they do that?

A. Due to jealousy on the part of this particular section, that they wanted to take away from Nashville the milling in transit privileges we had.

Q. Their object was one of two-fold, if I understand correctly, either to get for Macon the milling in transit privileges, or to take it away from Nashville, was not that the object?

A. Well, the first object, as I understood was to take it away altogether, that was the object.

Q. All right. They wanted, in other words, to put Macon, Georgia, on a parity with Nashville so far as the milling in transit privilege was concerned, either to take it away from both or give it to both?

A. That was the attitude of Macon until the Southeastern Millers Association intervened.

Q. That was the beginning of the suit, is that correct?

A. Yes.

Q. Now, you said, if I understood you correctly, that you knew some mills that operated—and by mills I mean those who grind wheat into flour—that operate under more than one name?

A. Yes, sir.

Q. And I think you named some, but I did not get them. Will you give me those again?

A. I started with the Liberty Mills of Nashville.

Q. All right, the Liberty Mills of Nashville. What other name does it operate under?

A. The Cumberland Milling Company.

Q. And does it operate under any other?

A. Model Mills Company.

Q. Model Mills Company?

A. Yes.

Q. And any others, the Liberty Mills?

A. They did operate under the name of the Nashville Milling Company.

Q. When you say they did, what do you mean by that?

A. I am not certain whether they are doing that now.

Q. The Nashville Milling Company?

A. Yes.

Q. Alright, any other name?

A. They operate under the name of the Ford Flour Company.

Q. Did not they use that for a distinct phase of business, rather than operating under that name? In other

words, don't they use the name of Ford Flour Company to sell the self rising flour that is mixed there?

A. They use the Ford Flour Company to sell the retail merchants, and the Liberty Mills to sell the jobbers.

Q. Don't they sell from the Ford Flour Company, a self-rising and blended flour?

A. They sell the processed flour through the Ford Flour Company.

Q. That is what I am talking about?

A. Yes.

Q. They use the Ford Flour Company to sell their self-rising and processed flour, as you call it?

A. I would not say it was all blended flour, because most of it is manufactured by the Liberty Mills on their mill string.

Q. Cannot you manufacture a blended flour through a mill string?

A. Yes, you can if you put the other machinery such as we do.

Q. If they have the other equipment,—they have other equipment on which flour is manufactured?

A. The Liberty Mills proper.

Q. It is rolled on that equipment?

A. Yes.

Q. They can get different grades of flour from their rolling it?

A. Yes.

Q. Is there any other name it operates under?

A. Not that I can remember.

Q. Can you name any more?

A. I could give Ballard & Ballard of Louisville, Kentucky.

Q. What other name does Ballard & Ballard operate under?

A. I have it written down but I forget the name.

Q. What other name?

A. Yes, one other name.

Q. You said Ballard & Ballard operate under another name, but you do not remember the name?

Mr. Malone: Well, let him look up another.

Q. Who else?

A. Inglehart Brothers, Evansville, Ind.

Q. They actually grind the wheat?

A. Yes.

Q. What other name do they operate under?

A. Brose & Arnold I think is one, and also Phoenix Flour Mills.

Q. Any other for Ballard & Ballard, do they operate under?

A. All of those are subsidiaries of the Postum Cereal Company.

Q. I mean Inglehardt, of course?

A. Yes, Inglehardt is a subsidiary of the Postum Cereal Company.

Q. The Postum Cereal Company is a great big company?

A. Yes, sir.

Q. Good and big, a great big concern?

A. Yes, sir.

Q. Do you have any of its stock?

A. No, sir.

Q. Any others?

A. The Columbia Milling Company of Columbia, Tennessee. I do not remember the other name. The Dunlop Flour Mill Company at Clarksville operates under the name of Super Flour Company.

Q. What do they sell under the name of Super Flour Company?

A. The same, self-rising and plain, as I do.

Q. They use the name Super Flour Company to sell Self Rising and plain flours?

A. They use the name Super Flour Company to sell through my trade, sell the retail merchants, whereas they cater to jobbers.

Q. But, if you will answer my questions, they sell under the name Super Flour Company their self rising flour, is that correct?

A. Both self-rising and plain, and also their feed.

Q. All right, what other name?

A. Well, I do not know any other name for the Dunlop. Take the Colonial Milling Company of this City.

Q. Do they grind wheat?

A. They grind wheat and also operate a blending plant.

Q. All right?

A. They have another name, I think I testified to that this morning.

Q. Do you remember that now?

A. I do not.

Examiner Sheppard: It is in the record. It is all right.

Q. Under that other name, does the other name have in it the word "mill" or "milling," do you remember that?

A. I think it has the word milling.

Q. You said in response to a question from Mr. Malone that your purpose in having these various and different trade names under which to do business was to give you a wider distribution of your product, because you often found it advantageous to give one merchant in a low locality the exclusive rights or exclusive privileges on one of your brands, is that correct?

A. That is correct.

Q. Could not you have accomplished that same purpose by increasing the number of brands without increasing the trade names?

A. No, sir.

Q. Are not there concerns engaged in the same character of business you are who do accomplish the same purpose by increasing the number of brands?

A. According to my own experience nobody can accomplish the same purpose, merchants will not handle any flour made by the same mills.

Q. That his competitor is handling?

A. Yes.

Q. You do not know of any other concern that does that way?

A. No.

Q. You would be surprised to find there were some?

A. But I know a number of mills who sell the same flour.

Q. I am not talking about mills, people in the same kind and character of business that you are?

A. There are some instances in which I will admit it can be done.

Q. They do accomplish the same purpose you do, by increasing the brands?

A. They do not accomplish the same purpose. They make some sales but do not get an appreciable increase in their volume of business.

Q. You don't think they do?

A. I know they don't.

Q. You would be surprised to learn that they do?

A. Very much surprised.

Q. How long do you let your flour that you purchase from the mill, how long do you allow that flour to remain in your warehouse before you use it?

A. Well, different periods.

Q. Different periods?
A. Yes. Now,—
Q. How,—

Mr. Malone: Let him answer.

A. What I was going to say was, that the flour will receive a natural bleach. If stored three months it will receive the same bleach you will obtain by using bleaching agents in bleaching flour. We try to let it stay there three months.

Q. How much of your flour do you let stay in your warehouse three months? I am talking about before you do anything to it. Do you let any of it lay in your warehouse three months before you do anything to it?

A. Yes. Some stays four or five months. I have kept some for six months.

Q. How much stays for three months, what proportion?

A. I have never figured out the exact proportion.

Q. Can you tell me approximately how much of the flour you use stays, before you do anything with it, as you buy it from the mills, two months?

A. I can tell you this—

Q. Can you tell me how much stays two months?

A. Yes, over fifty per cent will stay for three months.

Q. Over fifty per cent will stay for three months?

A. Yes, sir.

Q. Now, the other fifty per cent, how much of the other fifty per cent stays for two months before using?

A. I have never figured it out, but we never use any flour direct from the car to the mixer.

Q. You have to unload in your warehouse?

A. We unload in our warehouse.

Q. Then you have to select, as you do, different grades?

A. Yes.

Q. How long does that other fifty per cent stay in your warehouse before you put it in the mixers?

A. I could not say.

Q. Does it stay ordinarily as long as a month?

A. I don't keep a record of it.

Q. You do not keep a record of how long the flour stays there?

A. No, sir.

Q. Nor do you keep a record as to when flour is received and the time you use it?

A. We do this, we examine the flour before we put it in our self-rising machinery. We never put flour in that machinery unless it is sufficiently bleached, unless it has the proper characteristic to absorb the ingredients.

Q. You merely do that by opening the bag and looking at it?

A. We know where the flour is stored in our plant. I should have said we do keep a record of it, we actually do have a record of every car that comes in.

Q. Of course you do that. How do you determine whether the flour is properly aged or not?

A. We can determine it by taking this flour and comparing it with fresh milled flour.

Examiner Sheppard: You do not use any artificial bleaching method at all?

A. Yes, sir. Mr. Examiner, in order to secure uniformity in the flour we have to use it. We use what is called the Novadell process.

Examiner Sheppard: Is that a bleaching process?

A. That is a bleaching process used by all of the mills.

Q. At what period in your operation is the flour put through that process, after it is mixed?

A. The Novadell is put in at the same time the self-rising ingredient is.

Q. Suppose it is not self rising, when do you put it in?

A. It is put in at the same time with the phosphate.

Q. Added into the mixture?

A. Added to the mixture.

Q. It is a chemical put into the flour and stirred up in it which heightens the quality?

A. Yes.

Q. You do that with all of the flour?

A. With all of the flour.

Q. I imagine the amount or proportion of the chemical added depends upon the color of the flour when you put it in the mixer, is that correct?

A. Yes. The usual quantity I might state is infinitesimal, it is only four ounces to about forty barrels.

Q. The darker the flour is the more you put in?

A. Yes. We very seldom put in more than the correct quantity.

Francis J. McCarthy

Q. You only put in the correct quantity under the conditions, to get the whiteness?

A. Yes.

Q. But it requires more to make a dark flour white than a light flour?

A. You cannot take a common low grade of flour and add Novadell and make a white flour. You cannot do that.

Q. Do you use any other bleaching process than the Novadell?

A. No.

Q. You referred to the business you did last year, two million four hundred thousand dollars worth, if I remember correctly?

A. Yes, sir.

Q. How many barrels of flour did you sell?

A. Three hundred twenty thousand barrels.

Q. Three hundred twenty thousand barrels? That was both self-rising and processed, plain?

A. And processed, plain.

Q. Can you tell me what proportion of those barrels, if you cannot divide it, say so, what part of the three hundred twenty thousand barrels was plain flour, what part processed?

A. Roughly, seventy-five and twenty-five.

Q. Is that correct?

A. Yes, sir.

Q. You gave an estimate as to the proportion or quantity of self-rising flour, I think, you said, used in southern Georgia. Who made that estimate? Where did it come from?

A. That estimate was brought about in one of our hearings, either before the Interstate Commerce Commission or in a later case, I think brought by the Merchants' Exchange of St. Louis.

Q. The Merchants' Exchange of St. Louis estimated how much flour was used in southern Georgia?

A. I did not say they did. I said that testimony was brought out at one of those times, I forget which. The Merchants or Consumers in South Georgia at that particular time used ninety to ninety-five per cent self-rising flour.

Q. Will you tell me what that was?

A. That was 1916, or 1922, the ripping complaint from St. Louis, where they tried to take away or less than carload rates, it was brought out in that testimony.

Q. You do not remember which time it was?

A. No, sir.

Q. Do you know who brought it out?

A. No, I don't.

Q. Do you know how the estimate was made?

A. No, I don't.

Q. How long was the Ford Flour Company in existence before you went with it?

A. I think it started about 1897 as the Ford Flour Company. It was in existence previous to that time under the name of Owsley Flour Company.

Q. And it started as a concern making and selling self-rising flour, did it?

A. Yes.

Q. And it was, from shortly after it got its start, up until 1908, selling self-rising flour throughout this southeastern territory, wasn't it, or trying?

A. It was trying to do it, but it only had a local trade and some business on the Atlantic Coast, very little trade in either Tennessee or Alabama.

Q. Was Dr. Owsley the man that originated the self-rising flour in Nashville?

A. He was the man who originated the self rising flour in Nashville. The formula was orginated by Professor Liebig. That is quite a coincidence, Liebig originated the formula and people have been lying big about the flour ever since.

Q. How is that?

A. I say that is quite a coincidence, Liebig and big lie. The formula was gotten up by a fellow named Liebig, and all the opponents of it have been lying big about self rising flour ever since.

Q. Pardon me, I misunderstood. Of course I understand you claim to have introduced into the South your good biscuits?

A. Yes, I have that honor of introducing good biscuits.

Q. Before that time the people of the south did not have good biscuits?

A. I won't say that. There are good cooks in the south and were at that time, and the best cooks could make good biscuits, but the ordinary cooks could not. Out in most of the part of the south they had to eat the soda biscuits which were detrimental to their health, caused stomach trouble. I claim to be a benefactor instead of a malefactor.

Q. Also, the fact that the business of the Ford Flour Company grew during the time you were with it?

A. Yes.

Q. It had been in existence ten years before you went with it?

A. It was in existence longer than that, but after all their years of effort to introduce the flour in Nashville, the mills discouraged the use of self-rising flour, the salesmen discouraged its use, and in the City of Nashville to this day people will not use self-rising flour, thinking it contains injurious chemicals.

Q. There are some people who will not use phosphate baking powder because they think that is true?

A. I don't know.

Mr. Bane: There are, aren't there, Mr. Examiner?

Examiner Sheppard: Many. Many.

Q. So, that exists in many industries. Now, you state, if I remember correctly, that you blend and pack some flour for a miller that is a man who ground wheat, who was that?

A. Is it necessary to give their names?

Q. I do not see how I can test it in any other way. Here is what I want with it, I do not see how you happened to do it, anything of the kind, unless I do have that information?

A. It was packed for the Brown Milling Company of Las Cassas, Tennessee, that is near Murfreesboro, Tennessee.

Q. How often have you done that for them?

A. They generally bought about once a week, something like that.

Q. Are they still doing it?

A. At the last reports, they were. I remember an order from them about two weeks ago.

Q. How long have you been doing that for them?

A. Something like a year.

Q. You did not do it before?

A. No, sir.

Q. In large or small quantities?

A. It was large quantities from them. I have shipped them minimum carloads.

Q. Once a week?

A. Yes.

Q. What kind of milling concern is that, a large mill or a small mill?

A. It is a small mill. I do not know what the ca-

pacity of the mill is, but they find that they are not able to manufacture flour as cheap as they can buy.

Q. How do you know they found that out?

A. That is what they tell me.

Q. They tell you they could not, and get it from you?

A. Yes.

Q. Have you done the same thing for any other mill, that is, one who grinds?

A. Well, one of my subsidiary firms does. They have sold to several mills.

Q. What subsidiaries are you talking about? I did not know you had subsidiaries.

A. Well, one concern for whom I pack flour.

Q. I did not understand that you sell flour directly or indirectly under any other name than those you gave me, the Wautauga Milling Company, the Modern, and the—

A. Yes, I stated I packed flour for other concerns. I think I mentioned the United Flour Company.

Q. You did mention the United Flour Company as a subsidiary?

A. Yes.

Q. What other concerns do you pack flour for and sell to besides yourself?

A. The Falcon Flour Company.

Q. Where is that located?

A. Nashville.

Q. The Falcon Flour Company?

A. Yes.

Q. The United is in Nashville, isn't it?

A. Yes.

Q. Are you interested in the United?

A. Yes.

Q. Are you interested in the Falcon?

A. Yes.

Q. Do you really own them?

A. No. Well, it is operated on a profit sharing basis. I suppose I own them, though, but there are two or three other concerns which I do not own.

Q. You do own these two?

A. Yes, sir.

Q. Any other you pack for?

A. The Capitol Milling Company.

Q. You pack for the Capitol Milling Company?

A. Yes, sir.

Q. That has no plant at all?

A. No, sir.

Q. You pack flour for them?

A. Yes, sir.
Q. They sell it?
A. Yes.
Q. You put it up in bags marked "Capitol Milling Company"?
A. I pack it in bags marked "Capitol Milling Company."
Q. On which they have the name of Capitol Milling Company?
A. Yes, sir.
Q. Where is that located?
A. Nashville.
Q. Are you interested in that?
A. No, sir.
Q. No interest whatsoever?
A. No, sir.
Q. All right?
A. The Bell Milling Company.
Q. Where is that located?
A. Nashville.
Q. Does that have any plant at all?
A. They operate in grain as well as flour, they operate through Nashville Warehouse and Elevator Company.
Q. Do they have a plant in which they mix or blend flour?
A. No.
Q. Do you pack it for them?
A. Yes.
Q. In bags having the Bell Milling Company name on them?
A. Yes.
Q. Are you interested in that?
A. No.
Q. Go ahead?
A. The Star Mills.
Q. You now pack for the Star Mills?
A. Yes, sir.
Q. Does that own any plant at all?
A. No.
Q. Are you interested in that?
A. No, sir.
Q. You are not?
A. No, sir.

Mr. Malone: Wait just a minute. I do not see the relevancy of all this. There is no such charge in the complaint, it is absolutely outside of the issues

and pleadings, not germane to anything brought out in the cross-examination. I have allowed him to go pretty far with it.

Examiner Sheppard: Yes, Mr. Bane, I do not see the reason for it.

Mr. Bane: I think it is. I am trying to find out, this man is charged with operating under various names, I am trying to find out if he operates under any other names.

Examiner Sheppard: He is not operating, as I understand the testimony, he is making flour for other people.

Mr. Bane: Is not that all I am asking? All that I am finding out?

Mr. Malone: There is no such charge as that in the complaint. I do not see the relevancy.

Mr. Bane: All I am finding out is whether he does operate under the names.

Examiner Sheppard: Well, he does not, as I understand.

Mr. Bane: That is what I said.

Examiner Sheppard: He makes flour for those people and they sell under their own names.

Mr. Bane: That is what I asked and what he told me. It is certainly germane to find out whether he did or not, which is all I have found out.

Mr. Malone: That was not developed in the cross-examination.

Q. You said one of your subsidiaries packed flour for a flour mill?

A. Yes, sir.

Q. By that I mean one who grinds wheat flour?

A. Yes, sir.

Q. What subsidiary?

A. The United Flour Company.

Q. You packed it then?

A. I actually packed it, yes.

Q. For what mill?

A. I don't remember the name of the mill. I can furnish it.

Q. I wish you would do it and the length of time you have been packing for that mill?

A. Yes, sir.

Q. It is only one, is it?

A. That is the only one I remember. There may be others.

Q. If there are others will you furnish that too?
A. Yes, sir.

Mr. Bane: I think that is all.

Examiner Sheppard: While Mr. Bane is looking through his notes, there is one question I want to ask you. When you put a mixture in here, referring to Respondents Exhibit No. 4, how long does it take the operation until it comes out and is packed?

A. We let the flour remain in this mixing chamber, called the mixer, for ten or fifteen minutes until it becomes thoroughly mixed, and it requires probably ten minutes for that to empty into these cups.

Examiner Sheppard: So it goes all through the machine in about twenty minutes?

A. Yes, sir.

Examiner Sheppard: All right, Mr. Bane.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Any questions, Mr. Malone?

Recross-examination by Mr. Malone.

Q. Mr. McCarthy, you were asked if you kept a laboratory. Is it necessary for you to have a laboratory to make such tests as are necessary to determine the different qualities of flour?

A. When I was with the Ford Flour Company we had a laboratory for probably six months and we found according to our ideas it was not suitable for our kind of business, the chemical analysis, etc. Through our long experience in the business, we were able to judge the quality of flour through several tests.

Q. What are those tests?

A. The first test, you take the flour, take two different kinds of flour which, say, place them on a board like this, side by side, and smooth them down with a paddle and shove them together. You look at those two samples, after you smooth them down you can tell the difference between them. One will show darker that the other. One will show granular, different grades of flour.

Examiner Sheppard: Do you do that with a microscope?

A. With the naked eye first, then with the microscope. Then, if you want to be more pronounced you will dip this paddle containing the flour in water. The water will bring out the color much more distinctly than the dry test. And, if we are not satisfied with that test, we have a baking test which we consider the best test of all, and then test the flour for soundness.

Q. Before you get on to the test for soundness, what is your baking test?

A. For instance, if you were to buy say five thousand barrels of a certain flour, the mill will submit a baking sample. In order to be sure the flour is suitable for our purpose, after making these tests, we will make the baking test. Then when the flour is shipped, when it comes in, if there is any question about the soundness at all, we have further tests we make. We will take the flour and make it into dough, put the dough into boiling water, and if there is any unsoundness in the flour it will become manifest after taking it out of the boiling water.

Q. You were asked a great deal about blenders? Have you been spending your time going around about blending plants in the last twenty years?

A. I have never spent a moment trying to find out what my competitors do. I do not try to find out what prices they make, what processes they use, or anything in connection with their business. I have no curiosity whatever for that.

Q. So you say you do not know that within the last twenty years they have been mixing the flours with a shovel, but that they put it in a packer, do you know to the contrary?

A. To the contrary, how do you mean?

Q. I mean that they had not done that?

A. Well, I know that all of the concerns in the same kind of business I am in here in Nashville, manufacturing similar process flour, all have their plants with a few exceptions, that is the main ones, the Nashville Rolling Mills, Cherokee Rolling Mills, The Royal Milling Company, and my Company, have their blending machinery.

Q. You do not know what process the milling companies all over the south use?

A. No, sir.

Q. Now, whether you call him a blender or not, anybody that takes two or three different kinds of flour and puts it through the same kind of machinery that you do, and gets out an entirely different product, do you con-

sider him a manufacturer, no matter what you call him?

A. Any concern which takes raw products, puts them through machinery and turns out entirely different and distinct product, I would term to be a manufacturer.

Q. You were asked about the Colonial Milling Company. I have been handed here since your re-examination started, a circular headed: "American Flour Company, General Offices, Independent Life Building, Nashville, Tennessee"; do you know whether that is a sample of literature put out by the Colonial Milling Company of Nashville?

A. I regret to say I do not know.

Q. You do not know whether they do business under the name of American Flour Company, also?

A. No.

Q. You spoke of plain processed flour in your redirect examination. As I understand, you make two kinds of flour, manufacture two kinds of flour, self rising and processed. In a way that has been fully described. I want you to tell us, when you say plain flour you just mean to distinguish that from self rising, is that correct?

A. That is correct.

Q. You do not mean a raw flour?

A. No.

Examiner Sheppard: Your plain flour includes, as I understand, a little phosphate?

A. My plain flour includes a little phosphate and also a bleaching agent called Novadell.

Examiner Sheppard: Yes, but the main ingredient is phosphate?

A. Yes, sir.

Examiner Sheppard: That is one type you make, the other is self rising flour?

A. Yes, sir.

Redirect Examination by Mr. Bane.

Q. Do you have on the bags and the labels on the barrels, the word "Processed"?

A. I don't remember.

Q. Can you offer the flour to the consumer?

A. Oh yes, that is right, when I come to think of it, the United States Pure Food & Drug Act requires us to put on there, phosphate added.

Q. You have that because you have added phosphate?

A. Yes, sir.

Q. There are the bags right behind you. Do you have on any of your bags or labels the word "Processed"?

A. No.

Mr. Malone: They speak for themselves. It is in the record and excepted to.

Examiner Sheppard: Yes, sir.

Q. Do you have on those bags plain flour or plain patented?

Mr. Malone: The same objection is made, the bags are in the record.

Examiner Sheppard: That is true, they can be seen. I will let you answer, but make it short.

A. To tell you the honest truth, I do not remember everything I have on those bags.

Q. There they are. Would you mind giving them to me?

(Passing Exhibits to Mr. Bane.)

Q. I will ask you to look at Commission's Exhibit No. 37 and ask if that does not have on the label "Standard Flour"?

A. If you will notice, it is "Standard Patent."

Q. "Standard Patent." I will ask you to look at Exhibit, Commission's, No. 41, and ask what kind of flour that is described as?

A. "Best Plain Flour."

Q. Look to Commission's Exhibit No. 44, what kind of flour?

A. "Standard Plain Patent."

Q. And Commission's Exhibit No. 46, described as what kind of flour?

A. "Best plain patented."

Q. Each of these tests, you have described, the test where you put the two flours on a board with a paddle and mix them together, are the tests where you sometimes wet the paddles after you put that paddle in the flour, the baking test, the boiled dough test, they are the four you have described?

A. Yes.

Q. Which do you use?

A. I use all of them.

Q. On each flour?

A. No, I use all of them at times.

Q. Some on one flour and some on another?

A. Ordinarily the only test that is necessary to use is the first two tests I have mentioned.

Q. Which?

A. The dry test on a board.

Q. The dry test on a board, that is, mixing them together, and looking at them?

A. Yes, I should add to that, however, you put it under water and let it dry out.

Q. The first test is, you put the two flours from two different sources on the board?

A. Yes, sir.

Q. You take the paddle and smooth down and mix together?

A. No.

Q. You mix—

A. You don't mix them together. For instance, after I put them on the board, say this way, I take this paddle and separate those two very distinctly, just cut off the space, then shove them together gently so there is a mark of demarkation between the two.

Q. You do not mix them?

A. No.

Q. You just look at them, that is one test?

A. That is one test, to just look at them.

Q. Then the other test is, after you have got them together in that shape, close together, you wet the paddle?

A. Yes.

Q. What do you do?

A. After I wet the paddle, the difference in the grade of flour,—

Q. What do you do after you wet the paddle and put the flour on?

A. After we wet the paddle we give it time for the water to soak through it.

Q. Through what, the paddle?

A. Through the flour.

Q. Well, after you wet the paddle, do you pick the flour up on the paddle, or how?

A. We wet the paddle, put the flour on it, and take the paddle and flour and put them under the water.

Q. I see, after you put the flour on the paddle you put it under the water?

A. Yes.

Q. One grade or two grades?

A. Two.

Q. Separate, just as on the board?

A. Yes.

Q. You put it under the water?

A. Yes.

Q. Do they stay on the paddle?

A. Yes.

Q. Then you do what?

A. After the grades are close together—

Q. The next thing you do is to take the paddle out of the water?

A. Yes.

Q. Then, let it dry?

A. Sometimes we do, sometimes the difference in the grade is so slight it is not necessary to make a further test.

Q. Those are two tests you must frequently use?

A. Yes, sir.

Mr. Bane: That is all.

A. I should elaborate a little further: For instance, after we take the flour and paddle out of the water the difference will be more pronounced. The first thing I do, I will put the flour down on the stove or radiator and let it dry out, which is almost equivalent to baking, then if there is a difference between the two it is still more pronounced.

Q. Those are the tests you generally use, as I understand you to say?

A. I use the first three, you might say, and always let it dry out.

Q. You let it dry out?

A. Yes, sir.

Examiner Sheppard: Mr. Bane, the complaint in this case is whether or not the gentleman is a miller or a manufacturer. I want both you gentlemen to understand that I am not interested in all those things about the tests of the flour.

Mr. Bane: I objected to it, Mr. Examiner, and you let it go in on cross-examination. If it has some probative value I want to find out what it is.

Examiner Sheppard: I am telling you this now, because I have let this gentleman testify, being the respondent in this case, right broadly, but I am going to limit the investigation under the complaint to the charge as to whether he is a miller or a manufacturer. This is very interesting to me. I am learning something, but it has no more to do with this case in my judgment, than the picture on the wall.

Mr. Bane: I fully agree with you, Mr. Examiner. I objected on cross-examination and you admitted it. Therefore, I am re-examining on it.

Q. What proportion of the time do you use the microscope in connection with those examinations?

A. We always use the microscope whenever there is any question about the difference in the grade of the flour.

Q. You spoke of the baking test, you get a sample of the flour from the mill you are going to buy, then bake it?

A. Yes, sir.

Q. After the flour comes in, do you put it under the baking test?

A. If we are not satisfied it is up to grade, we do.

Q. If you are not satisfied it is the same?

A. Yes.

Q. Those are the tests you use?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Mr. Malone: That is all.

Witness Excused.

KEY MURPHEE being produced, sworn and examined, testified on behalf of the Commission:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Murphee?

A. Troy, Alabama.

Q. What is your business?

A. Wholesale Grocery Business.

Q. Have you been in that business, for how long?

A. About ten years.

Q. In Troy, Alabama?

A. Yes, sir.

Q. Do you buy and sell flour?

A. Yes, sir.

Q. The name of your concern is what?

A. Henderson Nursery Grocery Company.

Q. What do you understand, Mr. Murphee, as to the character of the concern, or what does the word when used in the name of a concern imply to you or indicate to you as to the character of that concern, when the concern is called a mills or mill, such as the Wautaga Milling Company or the Star Mills, what do the words Milling or Mills in that connection in the name of a concern convey to you?

A. It conveys to me the idea that they are grinders of grain.

Q. That they make the meal or flour out of the grain?

A. Yes.

Q. When such a concern is selling flour, what idea is conveyed to you by the use of such words in their name, as to the character of the concern?

A. The same idea is conveyed, they are grinding wheat. However, I want to say that I did not know that altogether from any one.

Q. But, that is the idea they convey?

A. That is the idea it naturally conveys to me.

Q. Is that what the words mean to you here?

A. Yes.

Q. Such words when used in the name of a concern selling flour?

A. Yes, sir.

Q. Does the fact that you so understand such words when used in the name of a concern trying to sell your flour, and your understanding of such words when used in the name of a concern, have any influence on your buying flour?

A. Well, I have bought flour from concerns using the name of mills or Milling Companies, knowing that they were what is termed blenders. It depends upon the grade of flour I am buying.

Q. Which do you prefer to buy from, the concern actually grinding wheat into flour or a blender?

A. I will answer that question by stating I have never bought from a blender, what is termed "Short patent," Plain flour, the only flour I have ever bought was what we term "Competitive Flour," flour sold on a price.

Q. Do you deem it to your advantage to buy from the

concerns actually buying the wheat and grinding it into flour or not?

A. I prefer to buy from them.

Q. Why?

A. Because I think they are equipped, at least, to make the better flour.

Q. Does that mean you think you will get a more uniform grade of flour from them under the same brand?

A. Yes.

Q. Have you in the last two or three years bought any flour knowingly from a blender or mixer, rather than from a mill that grinds?

A. Repeat that question again, please.

(The question was then read to the witness.)

A. Not within the past two years.

Q. Why?

A. Well,—

Q. Is that because you prefer to buy from a mill?

A. Well, I would not say I did not buy from them for that reason which I stated a while ago. I have found most of the blenders of Nashville, go direct to the trade, that was my main reason for having quit buying flour from the Nashville blenders.

Examiner Sheppard: You mean they do not sell to the jobbers and wholesalers?

A. They sell to the jobbers and wholesalers, but I find they also through other mill names are selling the same grade of flour to the retail trade that they were selling to me, perhaps under another mill name.

Examiner Sheppard: Are you interested, Mr. Murphee, when you buy flour, are you especially interested in the wording that may be on the container?

A. Well, you mean as to the brands, yes.

Examiner Sheppard: I mean as to any wording that may be on the container.

A. Yes, some brands will appeal to you more than others. You will think it will be a better seller than other brands.

Examiner Sheppard: Does the word "milling" or "manufacturer" have anything to do with your interest?

A. Well, it does to me, yes.

Examiner Sheppard: Suppose you had a container that contained a certain brand or name on it, no word "milling" or "manufacturer" on it?

A. I would make some inquiry as to who manufactured that flour.

Examiner Sheppard: All right.
Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. Mr. Murphee, as a merchant, you are a jobber, I believe?

A. Yes, sir.

Q. You want to supply your trade, naturally, with a good article, don't you?

A. Yes.

Q. And at a reasonable price?

A. Yes.

Q. And you buy from people who will give you prompt service?

A. Yes.

Q. Now, therefore, what you have in mind when you made a purchase are those three things, the quality of the stuff, the price to which you get it, and the goodness of the service of the persons who sell it, are not those the tests?

A. Yes.

Q. You know of course that the so-called blenders do have mills or machinery through which they put their flour, you understand that?

A. I don't know just exactly how it is done, but I have an idea it is mixed with machinery. I have never been in one.

Q. You have never been in a blending plant?

A. No, sir.

Q. Or a self rising flour manufacturing plant?

A. No, I have not been in one. I have been in regular flour mills, but I could not say I understand the process by which it is made.

Q. The word "mill," of course, you were asked what you understood by the word "mill," it can have many meanings?

A. It naturally conveys one idea to me.

Q. I mean for instance, just to make plain what I am after, you do not grind cotton in a cotton mill, do you?

A. I don't suppose you do, you gin it.
Q. You do not grind steel in a steel mill?
A. I cannot say, I have never been in a steel mill.
Q. You do not grind wood in a sawmill, do you?
A. I don't think so.

Mr. Bane: I object to that. Of course those products are not ground to make a finished product of them.

Mr. Malone: I am just on the general word "mills."

Examiner Sheppard: I will let you proceed.

Q. And it is true as to the **word** as defined in Webster's dictionary, which,—we all know Webster in this part of the country—in Webster's dictionary that is given as one definition of mill?
A. I don't know just the definition of it.
Q. Let me read it to you then:

"In modern usage the term mill includes various other machines or combinations of machinery, which resembles the flouring mills to which the term was first applied, not in its circular, crushing, or grinding action, but in the more general one of transforming from raw material by mechanical processes into a state or condition for use; as sawmills, cotton mills, silk mills, fulling mills, oil mills, slitting mills, powder mills, etc., and to some of which the terms 'manufacturer' or 'factories' is also applied."

Now, that is true then, of course, we all know that in common parlance the word "mill" may mean manufacturer as well as a place where flour is ground?
A. Yes, sir.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. Do you understand, or from your experience, do you feel that the concern, whether the concern is a mill or a blender, has anything to do with the quality of the flour?
A. Well, I could not say that I do, that it would have anything to do with it.
Q. I thought you testified or said, or you told me you preferred to buy from a mill because you get a more uniform product?

A. I do, but that is just my own idea about it.

Q. You do?

A. That is just my own idea about it.

Q. And you feel you get a more uniform product from a mill than from a blender?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Recross-examination by Mr. Malone.

Q. Do you know that a miller has to make his self rising flour by the same process as the blender, so-called?

A. Oh, I know it has to be mixed.

Q. It is a separate process, and the same machinery has to be used?

A. Yes, but I thought the question was the quality of the flour, regardless of the mixture.

Q. If it depends upon the quality of flour, which either uses, if the miller uses a better quality of flour than the blender, then he will have a better self rising flour, but then if there is the same flour used, there is no difference in the product, there?

A. No, sir.

Mr. Malone: All right.

Examiner Sheppard: Mr. Murphee, just one more question. Do you sell self-rising flour?

A. Yes, sir.

Examiner Sheppard: If you see the word "milling" or "mill" on the outside of the container, would that indicate to you that the manufacturer was a grinder of grain?

A. Well. Mr. Examiner, of course I know now from experience, I have been in business, that the blenders use the word "mill," therefore, really, unless I know, it would not convey any meaning to me at all.

Examiner Sheppard: All right.

Witness Excused.

A. J. LYON, being produced, sworn and examined on behalf of the Commission, testified:

A. J. Lyon

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Lyon, please?
A. Meridian, Mississippi?
Q. What is your business?
A. Wholesale grocer.
Q. How long have you been in that business, Mr. Lyon?
A. Forty-two years. I have been in my own account, thirty-seven years.
Q. Do you handle flour?
A. Yes, sir.
Q. When the word "mill," or the word "milling" is used in the name of a concern offering to sell or attempting to sell, flour, or on the sack in which the flour is put. what kind of a concern do you understand it to be?
A. I understand that they grind wheat.
Q. Grinding wheat into flour?
A. Yes, sir.
Q. Those words indicate that to you?
A. Yes, to me.
Q. Have you any preference as to which you use, or which you shall buy from, the concerns that grinds the wheat into flour and then sells it, or a concern that buys flour from some one else who grinds wheat into flour and then mixes it?
A. I prefer to buy from the one who grinds the wheat.
Q. Do you think it is to your advantage?
A. I do now, yes.
Q. Why do you prefer to buy from one who grinds the wheat?
A. Because of a more uniform grade.
Q. Why do you think it is to your advantage to buy from one who grinds the wheat?
A. Why?
Q. Yes, you said you prefer, and think it is to your advantage. Do you think it is to your advantage for the same reason?
A. Yes, because they grind the wheat.
Q. Do you come in contact with your trade any, Mr. Lyons, your customers?
A. Not as much now as I formerly did.
Q. You do come in contact with them some now?
A. Yes, sir.
Q. Formerly did you come in contact with them to some extent?
A. Yes, sir.

Q. What time do you mean by formerly?

A. In the last few years I have been turning the sales line over to the traveling men, but I do try to keep in contact with them.

Q. Through what territory do you sell?

A. West Alabama and East Mississippi.

Q. In your experience what have you found that the word "mill" when used in the name of a concern offering to sell flour, or the word "milling" when used in the name of a concern offering to sell flour, indicate as to the character of the concern, to your customers?

A. It indicates that they grind the wheat.

Q. Indicates that such a concern grinds the wheat into flour?

A. Yes, that they grind the wheat into flour.

Mr. Bane: That is all.

Mr. Malone: We have to object to what he thinks is in the minds of his customers. Let him bring the men up.

Mr. Bane: I did not ask him what he thought was in their minds. I asked what was perfectly good evidence, what he found in coming in contact with his customers.

Examiner Sheppard: That is what I understood, his experience in it, gathered from the customers.

Mr. Malone: I submit that is hearsay anyhow. Let the customers say what it indicates to them, not what he says he thinks it indicates.

Mr. Bane: Not at all hearsay. It is not even hearsay, under an exception, it is direct evidence as to the man's knowledge of his experience from thirty-seven years in the wholesale grocery business, dealing with his customers.

Mr. Malone: He got that knowledge by talking with his customers, asking what they thought, that was the only way he could know.

Examiner Sheppard: That is true, but in my judgment there are a great many different ways for us human beings to acquire knowledge. One is reading, another is what we get from association with our fellowmen, to a limited extent, that knowledge is valuable, and to that extent as to probative value I shall let that in.

Mr. Malone: That is all right.

Examiner Sheppard: I will give you the same opportunities.

A. J. Lyon

Cross-examination by Mr. Malone.

Q. Mr. Lyons, do you ever buy flour from so-called blenders, that is, people that do not grind their flour?

A. Not any more, no sir, not for some time.

Q. The blenders sell direct to the retailers, many of them, as you heard Mr. Murphree testify. You heard Mr. Murphree testify a while ago?

A. Yes, I heard him testify.

Q. And the blenders sell direct to retailers?

A. Yes, and some jobbers.

Q. But don't many of them sell direct to the retailers?

A. Yes, many do.

Q. Don't you know in your forty-two years, and don't you understand what the word "mill" has come to be applied to blenders as well as people that grind the wheat?

A. No, sir; I don't know that.

Q. You never heard of that?

A. No, sir.

Q. You never heard of a blending concern that used the word "mill"?

A. Had I ever heard? Yes, I have heard that.

Q. Well, then, you do know?

A. I don't know it—I didn't know it when I was buying from them years ago, but there is one mill here I believe, which used to blend.

Q. When you were buying from these so-called blenders, self-rising or process flour, didn't you know how they made their flour?

A. No, I didn't know how they made the flour. I didn't know how they made it. I never seen a plant in my life.

Q. Did you think every grinder ground flour, everybody you bought from?

A. When I first bought from them I did, then, I did, yes.

Q. That is hard for me to understand, Mr. Lyon, you seem to be a very intelligent witness. Now, do you mean to say that you did not know how this self rising flour was made, and had not known for years where it was made?

Mr. Bane: I object to that. Self rising flour, or at least some of them are made by mills grinding the wheat.

A. J. Lyon

A. Oh, I know how it is made, we buy from many mills which made self rising flour, makes it with baking powder, is that what you mean?

Q. That is one thing I thought you meant you did not know, how self rising flour was made?

A. Yes, that is made by the M. T. Baker Milling Company, The Redville Mills, The Acme Milling Company of Hopkinsville, Kentucky.

Q. They are some people you buy from. Who are some of the other people you buy flour from?

A. That is all I buy from.

Q. Who did you buy from?

A. The M. C. Baker Milling Company of Red Bud, Illinois.

Q. Who else?

A. The Acme Milling Company of Hopkinsville, Kentucky.

Q. All right, who else?

A. The Postell Milling Company of Nascouta, Illinois. We have handled those flours for over thirty years.

Q. Don't the so-called blenders buy from these concerns? Don't they sell to so-called blenders?

A. I don't know whether they do or not.

Q. You mean these mills?

A. Yes, sir.

Q. You do not know?

A. I don't know.

Q. And if they sell plain flour to the blenders and that blender, so-called, would use exactly the same self rising process as that mill used ,it would be as good flour, as good self rising flour, would not it?

A. I don't know whether it would or not. I don't know about the other fellow's grade.

Q. I am talking about his mills, right here. If they buy from the mills a certain grade of flour, from the Baker Milling Company and put it through exactly the same self rising process that that milling company would put it through, and produce a self rising flour from exactly that same flour with leaven and ingredients added, would not it be just as good flour, as good self-rising flour as is made by the grinding mill?

A. From the testimony I have heard today I understand they do not use laboratories, these blenders. My understanding was that the other mills do have laboratories, and for that reason I would have more confidence in the mill.

Q. You do not know anything about it. You are just

trying to make an argument from the testimony you heard put on the stand today, and your own admissions?

Mr. Bane: I certainly submit on the witness' behalf he has been asked argumentative questions and he has to argue back.

Examiner Sheppard: Go ahead. I am inclined to be interested.

Q. I want to bring out a fact. Do you know anything for a fact or not? Are you just making an argument on your own statement, from what you have heard here today?

A. Well—

Q. Is not that a fact?

A. I guess it is a fact.

Q. Of course it is a fact.

A. I thought that would be—

Q. Now, do you mean to say the word "mills" or "milling" means only a grinding mill for flour?

A. I have always considered it that way.

Q. You have never heard of a steel mill in your life?

A. I—

Mr. Bane: I asked the specific question, Mr. Malone with reference to a concern selling flour, and my direct examination was confined thereto.

Examiner Sheppard: Well, the cross examination rules are a little broader, I will let him answer.

A. Have I heard of a steel mill?

Q. Yes?

A. Yes, sir.

Q. You don't think they grind flour in them, do you?

A. No.

Q. You don't think they grind flour in a saw mill, do you?

A. No.

Q. And you do not think they grind flour in a cotton mill?

A. No.

Mr. Bane: I am objecting to all of this because irrelevant and immaterial.

Examiner Sheppard: Yes.

Mr. Malone: I am testing the scope of the word "mill."

Mr. Bane: My examination was confined to flour.

A. J. Lyon

Q. Did not you buy from the Nero Mills here at Nashville?

A. I bought a couple of cars, bought it just as a matter of price.

Q. I see. Didn't you know when you bought that that they did not grind their own flour?

A. No, sir; I did not. I did not know they were not millers.

Q. You thought?

A. I thought they were millers when I bought, but I was buying price flour when I bought that, the cheaper price than I could get at a mill.

Q. What is your test for buying flour, what are the elements, don't you buy flour for price and for quality and for service that the man gives you?

A. Sometimes I buy flour on account of price, when we want a price flour. That was a time when I was hunting something and these regular mills did not make it. We have no occasion to test the flours because we have used the same brands for over thirty years on the market and in our store house. We do not switch around with brands.

Q. You buy, you mean, just the same flour all the time, no matter what price and from the same people?

A. Yes.

Q. That is your way of doing business?

A. Yes, the same brands. We always compare those prices with other mills of similar grades, always know whether they are in line or not.

Q. It does make a difference?

A. I mean by that we try to get them down to the right price to buy it, but notwithstanding that we buy the brand.

Q. If you cannot Jew them down, as the phrase goes, you go ahead and buy anyway?

A. We try to make them go ahead and meet the competition.

Q. Competition is governed by price, quality and service?

A. Yes.

Q. Those three elements?

A. Yes, sir.

Mr. Malone: All right.

Redirect Examination by Mr. Bane:

Q. What do you understand when the phrase is used, "Manufacturer of Flour"?

A. J. Lyon R. H. Harrison

A. Grinding wheat to make flour.

Q. Don't some mills, Mr. Lyon, sell direct to the retailer too?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Recross-examination by Mr. Malone.

Q. Mr. Lyon, have you seen the representative of the Acme Milling Company in town today?

A. No, sir; I have not.

Q. Did not you know he was here today?

A. I just heard he was here.

Q. Don't you know the Southeastern Millers are having a convention?

A. No, sir.

Mr. Bane: I will state for the purpose of the record and for Mr. Malone's information, when this hearing was set here, I did not know in setting the date, I did not know the southeastern millers were meeting here. It was only on yesterday afternoon that I learned the Southeastern Millers were meeting here.

Examiner Sheppard: We are glad to have them out this morning.

Mr. Bane: That is all.

Witness excused.

R. H. HARRISON, being produced, sworn and examined on behalf of the Commission, testified.

Direct Examination by Mr. Bane.

Q. Where do you live, please?

A. Murfreesboro, Tennessee.

Q. What is your business?

A. Grocer, retail groceries.

Q. Individually or with a concern?

A. We still carry the name of Harrison & Alexander, but Mr. Alexander has been dead about three years.

Q. You still operate under the name of Harrison & Alexander?

A. Yes, sir.

Q. In your business, do you handle flour?

A. Yes, sir.

R. H. Harrison

Q. What does the word mill or the word milling, as used in the name of a concern selling flour, indicate or imply to you, as to the nature or character of that concern?

A. I have understood it meant to grind the wheat.

Q. Grind the wheat into flour?

A. Yes, sir.

Examiner Sheppard: Does that apply to self-rising flour?

Q. It applies to both, self-rising and plain flour, does it?

A. Yes, sir.

Q. Do you deem it to your advantage to buy from a mill rather than from a concern, from a mill that grinds the wheat into flour rather than a concern that simply mixes or blends flour?

A. Yes, I most always buy from the mill.

Q. Why do you prefer to do so?

A. I think I get a more even grade of flour.

Q. Under the same brand?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. You heard the testimony of the previous witness, Mr. Harrison?

A. I heard one only. I just come in about five minutes ago.

Q. Where do you buy your flour from?

A. Well, I get some from a jobber. I handle a great deal of Liberty Mills flour. I used to buy from the Ford Flour Company a great deal of flour.

Q. What about the Murfreesboro Milling Company?

A. I handle very little of their flour.

Q. What about the Ban Milling Company of Murfreesboro?

A. I never bought a bag from him in my life. Mr. Ban is a retailer and miller, one of the strongest competitors we have. We do not usually buy from him.

Q. You say you bought from the Liberty Mills?

A. Yes, I have bought quite a little from them.

Q. Did you know at the time that they bought flour themselves, that they did not grind and put that up?

Mr. Bane: That is objected to, as Mr. Malone will hardly insist any previous witness has given any evidence to show the Liberty Mills ever bought any flour.

Examiner Sheppard: Let him answer.

Mr. Bane: If there is evidence showing that he does that, but there is no evidence to show that the Liberty Mills ever bought a pound of flour from anybody else.

A. They tried to sell me right recently. They offered to sell me blended flour and I refused to buy. They said they wanted to meet competition, and they were getting out a flour, trying to handle the proposition, but I stuck to my old brands.

Q. That is, they were buying flour from other mills and putting it through a self-rising process and putting that out?

A. They didn't say that.

Q. What do you mean by them meeting competition?

A. They are offering a cheap flour now. I don't know what it is, as I never bought it.

Q. Where did they get it?

A. I could not tell you.

Q. You do not mean they manufacture a cheap grade of flour?

A. I could not tell you. I suppose they do. I think all mills manufacture three or four grades.

Q. Did you buy from the Ford Flour Company?

A. Sometimes I do.

Q. Do you buy from the Snell Milling Company?

A. I have in the past. It has been several years.

Q. Do you buy from the Cherokee Milling Company?

A. I don't think I have ever had a sack of his flour in my house in my life. I would have to study on that. He has offered to sell me a few times. I might add I thought for years that he did have a mill.

Mr. Bane: Referring to whom?

A. Mr. Faircloth, I suppose.

Q. Of the Cherokee Mills?

A. Yes, sir.

Q. What do you call that? Look at that? Somebody just showed you that, what would you say it was a picture of? I am referring to Respondent's Exhibit No. 1? What would you call that if somebody just showed you that?

A. Well, I don't know that I would know what that is.

Q. It would not convey anything to you. You see here some negroes getting flour in a sack, but that would not convey anything to you at all?

A. Yes, that conveys something.

Q. Well, let us have it?

A. It looks like they are sacking flour.

Q. Yes, sacking flour, I suppose in a steel foundry, do they? What do they sack flour in?

A. They sack a great deal of it in blenders and mixers mills.

Q. Mills, yes, I thought we would get to it after a while?

A. Sure, you will get to it quicker, if we wanted to.

Q. Look at that, you would not have any idea what that was, Respondent's Exhibit No. 2. Would that convey any idea to you?

A. I have had very little experience with mills. I would not know what that was.

Q. You would think that was a shoe factory, probably?

A. Oh, no.

Q. What would you say it was?

A. I could not say it was a flour factory.

Q. That would not convey any idea to you at all?

A. There is nothing in it to indicate flour to me.

Q. Those sacks piled over there probably have gun powder in them?

A. They could be sacks of coffee.

Q. That would not suggest a mill to you?

A. Not at all.

Q. It would not suggest a manufacturing process to you at all?

A. Not at all.

Q. Let me have the names of those mills you buy from, The Ban Milling Company?

A. No, sir.

Q. Well, you state them?

A. The Liberty Mills; Ford Flour Company, Ragland & Potter Company, wholesale grocermen.

Q. Ragland-Potter Company, all right, let us have the rest.

A. I used to buy from Henry King & Company when they were in business.

Q. What did you say about Mr. Snell, did you forget him?

A. I bought from Mr. Snell two or three years ago.

Q. The Snell Milling Company?

A. And I bought from Henry King.

Q. The Snell Milling Company. Who did the Henry King Company buy from, and who did Ragland buy from?

A. They bought direct from the mills. I split cars with them and knew it was not a blended flour, as we handled the original mill brands.

Q. That is all right. Do you know what mills they were?

A. Yes, I think so.

Q. What were they?

A. The Sunnyside Mills of Evansville, Indiana, I think.

Q. Who else?

A. The Home Mill & Grain Company, Mount Vernon, Indiana.

Q. Who else?

A. I don't recall any more right now. There are others. I bought from the Bellbuckle Mills of Bellbuckle.

Q. That is at Bellbuckle, Tennessee?

A. Bellbuckle, Tennessee, yes, sir.

Q. Now, any others that you recall?

A. Not at the present time.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane:

Q. All of these concerns, Mr. Harrison, that you have just named for Mr. Malone except the Snell Milling Company, and those that you designated as jobbers, you understood to be concerns grinding the wheat into flour?

A. I certainly did, yes.

Q. When you bought from the Snell Milling Company did you understand that to be a concern grinding its wheat into flour?

A. No, sir; I think it has been generally known for several years that the blenders call themselves millers. I knew at the time Mr. Snell was a blender and mixer.

Q. When you first bought from him?

A. Yes, sir.

Q. What did you understand the manufacture of flour to be?

A. I would think it would be the same as a mill or miller.

Recross-examination by Mr. Malone:

Q. You left out the Murfreesboro Milling Company?
A. I am buying from them now, and have for some time.

Redirect Examination by Mr. Bane:

Q. Does the Murfreesboro Milling Company grind wheat into flour?
A. I am sure they do. They have a mill there.

Mr. Bane: That is all.

Witness excused.

REGINALD CRENSHAW, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane:

Q. Mr. Crewshaw, where do you live?
A. Calhoun, Alabama.
Q. What is your business?
A. Retail merchant.
Q. How long have you been in that business?
A. Since 1926.
Q. At the same place?
A. Yes, sir.
Q. Do you handle flour?
A. On a small scale, yes, sir.
Q. What do you understand to be the character, or what do you think the character of a concern is which sells flour and has in the name under which it sells the flour the word "mill" or the word "milling"?
A. One who grinds wheat into flour.
Q. Do you prefer, or have you any preference as to whether you shall buy from a concern that actually grinds the wheat into flour as compared with a concern that merely mixes the flour and then sells it?
A. Well, I didn't have.
Q. Do you have now?
A. Well, I am buying from a wholesale groceryman now.
Q. Do you know whether that flour you buy from the wholesale groceryman, comes from a mill which actually grinds the wheat, or what?

A. So they claim, the Acme Milling Company.

Q. Do you care if it comes from one place or the other? Which do you prefer?

A. I would rather have it from a regular milling company.

Q. That is a concern that grinds wheat into flour?

A. Yes.

Q. Why?

A. I would suppose it would be a better grade.

Q. By better grade you mean what?

A. Quality, more uniform.

Q. A more uniform quality?

A. Yes.

Q. Is that what you prefer?

Mr. Malone: I suggest that he not put the words in the witness' mouth.

Examiner Sheppard: It is a little leading, Mr. Bane.

Q. Have you ever bought from a concern here in Nashville?

A. I have.

Q. What was the name of the concern?

A. Old Hickory Mills.

Q. When you started buying from them what did you think that concern was, the character of it?

A. I thought it was a mill that ground wheat.

Q. Ground wheat into flour?

A. Yes, sir.

Q. Why, because of the use of the word "Mills" in the name?

A. Yes, sir.

Q. Have you bought from them lately?

A. Not since July, 1928.

Q. Why?

A. One reason was I did not have the cash, and they required cash with order. I get time from the grocery man on my flour.

Q. Was there any difference in the quality of the flour, between the flour you get from the Old Hickory Mill and the other?

A. I consider it to be about the same grade I am getting now, close to the same stuff.

Mr. Bane: That is all.

Cross-examination by Mr. Malone.

Q. Who was the jobber that you bought from?

A. J. P. Beeland Wholesale Company of Greenville, Alabama.

Q. Do you know whose flour they handle, Mr. Crenshaw?

A. The Acme Milling Company is one, and then they handle the Indiana flour. I don't use that Indiana flour. I have not bought any of that.

Mr. Malone: That is all.

Examiner Sheppard: Mr. Crenshaw, just one question. You buy self-rising flour and sell it?

A. Yes, sir.

Examiner Sheppard: Does the word "milling" or "manufacturer" either, indicate to you that the man who sells that flour to you is a person who converts grain into flour? I am talking about self-rising flour men?

A. He puts the ingredient into the flour after he manufactures it.

Examiner Sheppard: I know, you said you sell self-rising flour. I don't think you understand. On the container itself are the words "milling company" or "Manufacturing Company." Would you think that a self-rising flour man was a grinder of grain?

A. Yes, sir.

Examiner Sheppard: All right.

Q. Do you know how self-rising flour is made, Mr. Crenshaw?

A. Not until—I didn't before I heard Mr. McCarthy.

Q. You just heard the testimony?

A. I did not know what kind of ingredients. I knew some ingredients were put in.

Q. You did not know how it was made, the machinery and process by which it was made?

A. No, sir.

Q. You did not understand that?

A. No, sir.

Redirect Examination by Mr. Bane.

Q. What do you understand the phrase "Manufacturer of Flour" to mean?
A. One who grinds.
Q. Wheat into flour?
A. Yes, sir.

Cross-examination by Mr. Malone.

Q. Don't you understand also that anybody who takes raw material and turns out a finished product is a manufacturer?
A. Yes, sir.

Mr. Malone: That is all.

Witness excused.

W. S. DAVIS, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane:

Q. Where do you live, Mr. Davis?
A. Hoboken, Georgia.
Q. What is your business, Mr. Davis?
A. General Merchandise.
Q. With a concern or individually?
A. Well, it was individually up to this year. It is W. S. Davis & Son.
Q. How long have you been in that business?
A. About thirty years.
Q. In the same place?
A. Yes, sir.
Q. Do you handle flour?
A. Yes, sir.
Q. Both self-rising and plain?
A. We handle very little plain.
Q. You handle self-rising mostly?
A. Yes, sir.
Q. Do you handle some plain? You said very little, I want to know if that means some or none?
A. I handle some, yes.
Q. What does the word "mill" or the word "milling," Mr. Davis, is used in the name of a concern selling flour, indicate to you as to the character of that concern?

A. Well it suggests the operation of mills.

Q. By that you mean what?

A. The grinding of wheat.

Q. Grinding wheat into flour?

A. Yes.

Q. And you so understand it?

A. I so understood it.

Q. When did you learn it did not necessarily mean that?

A. Well, I have been told, I am just telling what I have heard, and I had some things, I presumed it was blenders of wheat that made self-rising flour, and I supposed they did not grind the wheat.

Q. Yes, but used the term or word "mill" or "milling" in their name?

A. Yes, sir.

Q. When did you hear that?

A. I could not say.

Q. Do you remember receiving a questionnaire from the Federal Trade Commission with reference to the meaning of that word?

A. Yes, sir.

Q. How long ago was that?

A. I think some time last year.

Q. Do you remember you received that questionnaire, whether you were buying from any concern in Nashville?

A. Yes, sir.

Q. Did those concerns have the word "mill" or the word "milling" in their name?

A. I believe "Milling Company."

Q. At the time you received this questionnaire did you think that concern was a concern that ground wheat into flour, or think it was a mixer?

A. Yes, I thought they ground wheat.

Q. That they ground wheat into flour?

A. Yes, sir.

Q. Will you tell use the concerns you bought from in Nashville?

A. The Wautauga Milling Company.

Q. You bought from the Wautauga Milling Company?

A. Yes.

Q. Did you buy from any other?

A. Not—not along then. I have bought from some others.

Q. Who do you prefer to buy from, or which do you

consider to your advantage, to buy from a concern which grinds wheat into flour, that it sells, or a concern buying flour from others who grind and then mix it?

A. Well, I don't think it would really make any difference with me.

Q. Is there any difference in the quality of the flour coming from the two concerns?

A. I don't know of any.

Q. You don't know. How long have you been buying from the Wautauga Milling Company?

A. I could not tell you how long it has been.

Q. Approximately?

A. Five years or more.

Q. Five years or more. Did you ever buy any flour from the Modern Milling Company?

A. I don't think so.

Q. F. J. McCarthy Milling Company?

A. Yes, I think so.

Q. Any recently, or some time ago?

A. Well, it has not been recently.

Q. At the time you bought that flour, did you understand or believe that was a concern which ground its wheat into flour, or was a blender?

A. I could not answer that, because I don't remember.

Q. Have you ever bought from the Star Mills?

A. I don't think so.

Mr. Bane: That is all.

Mr. Malone: Stand aside.

C. T. BRYSON, being produced, sworn and examined on the part of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Bryson?

A. Cullasaja, North Carolina.

Q. What is your business, please, Mr. Bryson?

A. General Merchandise.

Q. How long have you been in that business?

A. Eight years.

Q. At the same point?

A. Yes, sir.

Q. At Cullasaja?

A. Yes, sir.

C. T. Bryson

Q. In your business do you handle flour?
A. I do.
Q. Plain and self-rising?
A. No self-rising.
Q. Just plain flour?
A. Plain flour.
Q. What does the term or word "mill" or the word "milling" when you see it in the name of a concern selling flour, indicate or what do you understand to be the character of the concern?
A. I always thought it was grinding wheat.
Q. Grinding wheat into flour?
A. Yes.
Q. Did that belief influence you in any way in buying? Do you prefer to buy from one who grinds wheat into flour as compared with one who does not, mixes flour and sells it?
A. I do.
Q. Why?
A. I thought it would be more uniform, that is what I was thinking. I thought I would want to buy from a grinder.
Q. From a grinder?
A. I had not given any thought to it, no.
Q. You prefer to buy from a mill, that is one that grinds flour?
A. I cannot say I do now.
Q. Do you buy from any of the concerns in Nashville?
A. Yes, sir.
Q. How long have you been buying from them?
A. I have been buying from one concern about three years.
Q. What concern is that?
A. Southern Flour Mills.
Q. The Southern Flour Mills?
A. Yes, sir.
Q. Do you buy from any other concerns in Nashville?
A. I might have, some.
Q. What kind of concern did you understand the Southern Flour Mills to be?
A. When I first begun I thought it was a mill that ground wheat.
Q. You thought it was a mill that ground wheat into flour?
A. That is what I thought.

Q. When did you learn that that is not so?

A. Six or eight months ago, I guess. I have not given it any thought.

Q. About the time you received the questionnaire?

A. It was after.

Q. After you received the questionnaire?

A. I think it was.

Q. What do you understand, Mr. Bryson, the phrase or term, "Manufacturers of Flour" to mean, one who grinds wheat or one who blends or mixes flour?

A. I have always thought of that as grinding wheat.

Q. Do you know, Mr. Bryson, what the people, the general public in your community understand the use of the word "mill" or "milling" to be, as to the character of the concern when used in the name of a concern selling flour?

Mr. Malone: We object to that question. I have not understood he knows.

Mr. Bane: I would like to have the question read. I asked if this man, who is a merchant selling the product, if he knows what his customers think, I have not asked anything else.

Examiner Sheppard: Just say yes or no. Do you know that he knows.

A. Yes, I know.

Q. Will you tell us what?

A. Yes, they think it is grinding wheat.

Mr. Malone: I move to strike out the question and answer and preceding question and answer on the ground that he cannot possibly know what all people in his community think about it. I move to strike that.

Mr. Bane: Mr. Examiner, if you please we have got a decision on that, and I think it is well established that such evidence is admissible. A man on the stand who sells this particular commodity here in issue to the public in his community, he is bound to know, selling that flour, to come in contact with that public and know what that public regards. I asked if he knew first, and when he said he knew, then what he knew.

Mr. Malone: You are asking here if anybody in that community knows.

Examiner Sheppard: I am going to give it probative value only.

Mr. Malone: Exception noted.

Q. At the time that you received this questionnaire, about April, 1928, was it not?

A. Some time last spring.

Q. Is that your handwriting on that questionnaire?

A. It is.

Q. Will you read the last sentence? I do not buy from mixers.

A. I know it, I thought I would not.

Q. At that time you were buying from the Southern Flour Mills?

A. I have since.

Cross-examination by Mr. Malone.

Q. Have you continued to buy from them since, Mr. Bryson?

A. Yes, sir.

Q. You buy because they give you a satisfactory product and one that is satisfactory to your customers?

A. Satisfactory to the trade.

Q. So it don't make any particular difference whether they use the word "mills" or not, or whether they grind or not, so long as the price and quality and service are furnished, is that correct?

A. Satisfaction to the customers, is all.

Q. And this has been satisfactory to you?

A. Yes.

Mr. Malone: That is all.

Witness excused.

W. T. SEWELL, being produced, sworn and examined on the part of the Commission, testified:

Direct Examination by Mr. Bane:

Q. Where do you live, please, Mr. Sewell?

A. Baxter, Tennessee.

Q. Where is Baxter, Tennessee, with reference to Nashville?

A. Something near one hundred miles east.

Q. What is your business?

A. Grocery business.

Q. How long have you been in that business?
A. Four or five years.
Q. Wholesaling or retail?
A. Wholesale.
Q. You have been in business in Baxter during that period?
A. Yes.
Q. The only experience you have had in the grocery business?
A. Yes, sir.
Q. Do you handle flour?
A. Yes.
Q. Self-rising and plain?
A. Very little self-rising, practically none.
Q. Mostly plain?
A. Yes.
Q. What do you understand, Mr. Sewell, the word "mill" or the word "milling" to indicate as to the character of the concern when you see it used in the name of a concern selling flour?
A. That would imply that they grind wheat and flour, I thought that was so, but I learned lots do not do that in the last year or so.
Q. When did you learn that?
A. In the last year or so.
Q. Up until that time—
A. I thought they were all grinding. I never gave it a thought.
Q. You thought that meant that they ground wheat into flour?
A. Yes.
Q. Does the use of that word mill or milling in the name of a concern selling flour induce or influence you in your purchase of flour?
A. Well, no, not now it would not. It did.
Q. It did at the time you thought you were buying from a mill?
A. I did at that time, I thought I was doing that.
Q. You thought you were buying direct from the mill?
A. Yes.
Q. And that did influence you in your purchase?
A. Well only in price.
Q. You thought you got a better price?
A. I thought I got a better price.
Q. By buying direct from the mill?
A. Yes.

W. T. Sewell

Q. When did you learn, Mr. Sewell, that some of the concerns using the word "mill" or "milling" in the name under which they sold flour were not actually grinders of wheat?

A. A year or a year and a half ago.

Q. After the time you received this questionnaire?

A. Yes.

Q. You received this questionnaire about the 16th of April, 1928?

A. I guess just about that time.

Q. That is the date on it?

A. Yes.

Q. Which do you prefer to buy from, one that mills their flour or wheat into flour, grinds into flour, or the concern mixing it?

A. I prefer to buy from the fellow who mixes now.

Q. Why?

A. Because I get better service and get just as good a product.

Q. Which did you prefer to buy from?

A. At that time?

Q. Yes.

A. I was buying most of it out of the north at that time, but I was getting a little better price.

Q. You preferred to buy from the mill?

A. Yes, at that time.

Q. Thinking you were getting—

A. A better price.

Q. A better price?

A. Yes, sir.

Q. Do you or not find any more uniformity in the quality of the flour under some brand coming from a mill, that is one who grinds, or from a blender or mixer?

A. It doesn't matter, as to the fellow I have been buying from.

Q. Who do you buy from?

A. The Nashville Rolling Mills.

Q. The Nashville Rolling Mills, located here?

A. Yes, sir. The Loudonville Milling Company of Loudonville, Ohio.

Q. What other?

A. The Consolidated Milling Company of Wichita, Kansas.

Q. All three of those are blenders, none do milling?

A. I could not say.

Q. How about the second one?

A. Loudonville Milling Company?

Q. Do they grind?
A. I understand they grind.
Q. And what is the other?
A. The Consolidated Flour Mills of Wichita, Kansas.
Q. Is that a grinder?
A. That is a grinder.
Q. And the other concern you buy from?
A. I understand is a mixer, so-called.
Q. You understand it is a mixer?
A. Yes.
Q. Up until a year ago you thought it was a mill?
A. I never had thought about it.
Q. You thought it was a mill because of the name?
A. I naturally implied that.
Q. What do you understand the term "Manufacturer of Flour" to mean?
A. Well, I would understand that to mean a manufacturer of flour from wheat.
Q. Grinding wheat into flour?
A. I would think so.

Mr. Bane: That is all.
Mr. Malone: No questions.

Witness excused.

T. M. TAYLOR, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Taylor?
A. Clanton, Alabama.
Q. What is your business?
A. Wholesale groceries.
Q. How long have you been in that wholesale grocery business?
A. About four years.
Q. Is that a concern or an individual?
A. No, a firm.
Q. What is the name of the firm?
A. Downs Grocery Company.
Q. Has that concern only been in existence four years, or you have only been with them four years?
A. No, sir; I have only been with them about four years.

Q. Does that concern handle flour?

A. Yes.

Q. Self-rising and plain?

A. Yes.

Q. What do you understand, Mr. Taylor, to be the character of a concern, or what do you understand the word "mill" or the word "milling" when used in the name of a concern selling flour to indicate as to the character of the concern?

A. I would think the mill would grind, a mill that grinds wheat.

Q. The same would be true if it were a "milling company," the word "milling" used in the name would indicate to you one who ground the wheat, as well as "mill"?

A. Of course, I never thought about this. I do not do the buying of the flour. All I know about a milling plant is what I have heard today.

Q. I am asking what you understand?

A. Well, I understand they manufacture flour from wheat.

Q. Grind wheat into flour?

A. Yes.

Q. Is the same thing true concerning the use of the word "milling" in its name?

A. Yes.

Q. Which does your concern prefer to buy from, a concern that grinds wheat into flour or a concern buying flour from others and mixing and selling it?

A. I would think the mill, the one that grinds the wheat.

Q. Why?

A. Well, just my personal knowledge, I would think they would be enabled to give better prices.

Q. What about the character of the product?

A. I could not say.

Q. Would you think they would be equipped to give you a better quality of product?

A. I could not say.

Q. From whom does your company buy?

A. Buys from the Acme Mills.

Q. Do you know whether or not that mill is an actual wheat grinder or a blender?

A. No, sir.

Q. Who else do you buy from?

A. The Hopkinsville Milling Company.

Q. Does that concern actually grind wheat into flour?

A. I have never seen it. I think they do though.
Q. From the name?
A. Well, yes.
Q. What other concern do you buy from, do you buy from any concern in Nashville?
A. We have bought here, yes.
Q. What concern?
A. The Snell Milling Company.
Q. What do you understand the term, "Manufacturer of flour" to indicate as to the character of concern selling flour? Is my question clear to you?
A. No, sir. Ask that again.
Q. What do you understand the term, "Manufacturer of Flour," when used in connection with a concern selling flour, to indicate as to the character of the concern?
A. That is a mill.
Q. That grinds wheat into flour?
A. Yes, sir.
Q. Do you know what your customers, those to whom your concern sells, understand the word "mill" or "milling" when used in the name of a concern selling flour to indicate as to the character of that concern?

Examiner Sheppard: Say yes or no.

A. No.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. I believe you said you did not do the buying of flour?
A. No, sir; I am not familiar with the flour business.
Q. You are just giving your idea of what other people might think about it?
A. Yes, sir.
Q. And giving your idea of what you thought?
A. Yes, what I thought.

Mr. Malone: That is all.

Witness excused.

H. J. ADAMS, being produced, sworn and examined on behalf of Commission, testified:

H. J. Adams

Direct Examination by Mr. Bane.

Q. Where do you live?
A. Cottons, Georgia.
Q. What is your business, please, Mr. Adams?
A. General Merchandise.
Q. With a concern or an individual?
A. Individually.
Q. How long have you been in that business?
A. Eighteen years.
Q. At Cottons, Georgia?
A. Yes.
Q. Do you handle flour?
A. Yes.
Q. Self-rising and plain, too?
A. Mostly self-rising, a little plain.
Q. You handle some plain, too?
A. Yes.
Q. How do you understand, Mr. Adams, as to the character of the concern, with the word "mill" or "milling" when used in the name of a concern offering to sell flour, what does that indicate as to the character of the concern?
A. I understand it to be grinders, grinders of wheat.
Q. Grinding wheat into flour?
A. Grinding wheat into flour.
Q. What do you understand by the term "Manufacturers of Flour," is that the same thing?
A. I think so, yes.
Q. Does the use of the "mill" or the "milling" in the name of the concern offering to sell the flour, influence you or induce you in any way to purchase flour from them?
A. I would rather handle flour from a mill grinding wheat into flour.
Q. Direct from the mill?
A. Yes.
Q. Why?
A. Because it is more uniform and I can get better service as a rule.
Q. You mean more uniform as to grade?
A. Yes.
Q. Under the same brand?
A. Yes, under the same brand.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. You have been sitting here listening to the testimony, of course?

A. Of course, I heard it; yes.

Q. Have you bought flour from the Metro Mills here?

A. I have bought about three years ago.

Q. How much did you buy from them?

A. I never bought, I don't suppose, over fifteen barrels in all from those people.

Q. Who do you buy from?

A. Sunnyside Milling Company of Evansville, Indiana.

Q. If the price is right, and quality right and service right, those would determine you in buying?

A. Sure.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. When you were testifying in answer to the questions I asked you, you were answering me as to your understanding, and not the testimony you heard here?

A. My understanding.

Q. Irrespective of the testimony, of anything that you have heard some one else testify?

A. Yes, sir.

Mr. Bane: That is all.

Examiner Sheppard: Do you want to leave me with the impression that it makes little difference to you when you see the word "mill" or "milling" as to where the flour comes from?

A. Quality and price has more to do with it, but I prefer to handle flour from those people.

Examiner Sheppard: You have been using self-rising flour?

A. I have been, yes.

Examiner Sheppard: Do you know whether or not it is made by people who have mills, or not?

A. I should think it was. The flour representative that sold the flour, represented them as grinders or men that sold the flour.

H. J. Adams J. B. McLemore

Q. The name indicates they are grinders?
A. The name indicates on the bills that they do grind.

Mr. Bane: That is all.

Mr. Malone: No further questions.

Mr. Bane: Mr. Examiner, I have one more witness subpoenaed for today but apparently he has not responded to the subpoena. I move that we adjourn until tomorrow morning at ten o'clock, at the same place.

Examiner Sheppard: All right, take an adjournment until ten in the morning.

(The further hearing of this cause was thereupon adjourned until June 27th, 1929, to be resumed at the same place.)

Docket No. 1601.

Nashville, Tennessee, June 27th, 1929.

Met pursuant to adjournment, ten o'clock A. M.
William W. Sheppard, Examiner.

Appearances:

Baldwin W. Bane, For the Commission.
Thomas H. Malone, For Respondent.

J. B. McLEMORE was thereupon called as a witness on behalf of the Commission, and having been duly sworn, testified as follows:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. McLemore?
A. Johnson City, Tennessee.
Q. What is your business?
A. Manufacturer of flour and feed.
Q. Individually or with a concern?
A. As President of the Model Mill Company, Inc.
Q. Of Johnson City, Tennessee?
A. Yes, sir.
Q. How long have you been president of the Model Mill Company?
A. Approximately five years.
Q. How many?
A. Five years.

J. B. McLemore

Q. Were you with the Company prior to becoming its President five years ago?

A. No.

Q. How long have you been engaged with or in the flour industry?

A. Since I was about twelve years of age.

Q. In what capacities have you been connected with it?

A. In practically every capacity from fireman in the engine room to the office.

Q. Were you ever connected with the Southeastern Millers Association?

A. Secretary for about twelve years.

Q. What period?

A. 1910 or '12, I have forgotten the exact date, to 1926.

Q. Where were the offices of the Southeastern Millers Association when you were Secretary?

A. In Nashville, Tennessee.

Q. You stated, I believe, you have been connected with the milling industry how long, how long did you say?

A. Since boyhood, approximately thirty-eight years.

Q. Are you familiar with the milling or the process of mills which grind wheat into flour?

A. Yes.

Q. Will you describe that process for us, please?

A. When the wheat is received at the mill, it is unloaded into elevators or bins where it is given certain treatment as a steam process. It is then transferred through another cleaning process, or several cleaning processes to the mill proper, where it is ground by the use of steel rolls and other devices into flour. For that purpose, of course, is required rather complicated machinery of various types, including the rolls, the sifters, or bolters, as you might call them, and various other mechanical appliances which go to make up the mill as a whole, the process as a whole.

Q. Now, can you describe in a little more detail, Mr. McLemore, please, just about what that machinery is, and if the wheat goes through more than one set of rolls, what number of rolls it goes through and what is done to the wheat as it goes, or before it goes through the rolls, or various rolls, please sir?

A. I have just previously stated, before going to the rolls, the wheat is cleaned in various ways through showers of one type or another, washers, etc., that process

alone is quite complicated, requiring a great deal of machinery. Then the number of rolls used depends to a large extent upon the system employed. We have a five break mill.

Q. That is the system of mill employed?

A. The system of mill employed. We, as I recall, have about eighteen spans of rolls. I may be wrong a little on that, possibly stands.

Q. When the wheat goes through, it goes through one set of rolls first?

A. First what we call the first break rolls, the second break roll, etc., until the process is completed. Of course it is transferred, in order to secure the maximum amount of flour from the wheat berry, it is necessary to crack the wheat from time to time as it goes through the mill. In other words, that entire process cannot be completed at one operation, but it is a continuous operation through a number of different rolls.

Q. Let me see if I understand correctly. The wheat comes to the rolls after it has been scoured and cleaned and goes to one roll where it is broken. At that break is some flour obtained?

A. Some little flour is obtained, usually of a rather indifferent quality.

Q. Then from those rolls the broken wheat is sifted or bolted or scoured in any way?

A. It is sifted out of there into several different streams.

Q. It is sifted as it comes off those rolls?

A. After each break.

Q. After the first break?

A. Yes, after the first break.

Q. Then some of that wheat may go from the first drop, depending upon which stream it goes into from the sifter, goes to one set of rolls, some to another set of rolls, and some to another set of rolls, is that true?

A. That is true.

Q. Depending upon, I imagine, the fineness of the break?

A. The fineness and character of flour. The first break flour, of course, in the more modern mills, is switched to the lower part of the mill immediately, because that flour must necessarily contain a certain amount of dirt, to make it plain, of undesirable qualities.

Q. That comes from the first break?

A. Yes, from the first break.

J. B. McLemore

Q. I am trying to follow the flour through the mill, Mr. McLemore?

A. Yes, sir.

Q. I understand after the wheat is first broken, then what is gotten from that break other than the flour, the little flour you say, that is also sifted or bolted and divided into various streams, which streams, I imagine, are determined by the size of break or particles of wheat that are broken up, is that true?

A. To a certain extent, yes.

Q. That goes into different rolls?

A. Yes.

Q. That is broken again?

A. Yes, sir.

Q. And streamed again?

A. Yes.

Q. And sifted again?

A. Yes, sir.

Q. And broken up into other streams?

A. Yes, sir.

Q. Then onto other rolls?

A. Yes, sir.

Q. That continues in your mill over five break processes?

A. That is true, and thirty-two separations.

Q. Thirty-two separations?

A. Yes, sir.

Q. Finally coming out, that flour, it is again rebolted, is that correct?

A. Yes, before it goes to the packing room.

Mr. Malone: Wait a minute. This is an extremely intelligent witness and I suggest that you let the witness testify and not ask if so and so is not true. Let him go on and describe the process.

Examiner Sheppard: I think that is true.

Mr. Bane: I do not mean to reflect on the witness. I do not think I can lead the witness on the way he makes flour.

Mr. Malone: I submit you are trying to do it. We submit you are making an assault with intent to do it.

Q. Then, that flour from the rolls, after being bolted, goes where?

A. The flour goes directly to the packing room after being rebolted. Now, let me explain to you this, these

various sifters or bolters, are used for classification of the various flours. After the flour leaves these rebolters, after it leaves these bolters, as a matter of precaution, for fear something might have happened in the mill, some cloth might have been torn, we rebolt all that flour again on what we call the Rebolter.

Q. The Rebolter is the same as the Bolter?

A. The Rebolter is of the same construction as the other, except it is a safety device.

Q. Is that the same things, as called in the milling industry a reel?

A. There are two methods of bolting, one through reels and one through sifters, but the objective is the same in each instance.

Q. The sifting of the flour?

A. The sifting of the flour.

Q. Then, where did you say it goes?

A. To the packing rooms.

Q. And then it is packed into the bags?

A. There it is packed into bags.

Q. Now, does the miller, that is, the one who grinds wheat, select and grade his wheat for grinding in his mill or not?

A. I assume that all millers do it. So far as our own company is concerned, all wheat is analyzed before it is unloaded, then assigned to certain definite bins, according to its classification. The flour is milled to definite standards, in order to insure uniformity, those blends are made up by the chemist and the superintendent from the reports which are on file in the superintendent's and chemist's offices, showing the characteristics and chemical constituents of the wheat itself.

Q. Does the actual miller, that is, the one who grinds the wheat, is he able to select his wheat for grinding from any particular section of the country that might have any particular wheat he wants?

A. To a certain extent, yes, and to another extent no. We are more or less dependent upon market conditions, as they exist from year to year. However, in order to maintain our standards we buy wheat in various sections of the country, some in one section, some in another.

Q. Depending upon the quality of the crop?

A. Depending upon the quality of the crop.

Q. Does the miller, and when I use the word miller, I refer to one who actually grinds wheat into flour, does

he have to absorb the local wheat crop in his immediate vicinity?

A. No.

Q. What is meant by terminal point, in the wheat or flour industry?

A. The terminal points are the points where there have been erected elevators for accumulating supplies.

Q. By supplies, what do you mean?

A. Corn, wheat, or oats, grain supplies.

Q. How does the cost to the miller of wheat from such terminal points compare with the cost to him of the local crop of wheat?

A. As a rule, the price of wheat in any given country point is merely a reflection of the price at the terminal, less the cost of delivery of wheat from said terminal. In other words, the terminal price is reflected back into the country, and becomes the standard price for everybody.

Q. That is becomes the price of the local crop?

A. Yes.

Q. What investment would be required, Mr. McLemore, to start a milling business—to start a mill for grinding wheat into flour with a capacity of three thousand barrels a day, and by day I mean a twenty-four hour operation?

A. With proper elevator equipment, over a million dollars, at the present prices.

Q. And what proportion of that investment would be in machinery?

A. Assuming that you mean clear installed, it would involve, the cost of mechanics and millwright work, slightly more than sixty per cent.

Q. Does your mill, Mr. McLemore, make and sell self-rising flour?

A. Yes, sir.

Q. Do the mills in the southeastern territory, or that sell through the southeastern territory generally make and sell self rising flour?

A. All of them, so far as I know.

Q. How is self rising flour made in the mill, that is when it grinds the wheat?

A. It is made in two ways. Some mills make this flour on the stream, by the addition of phosphates, soda and salt through mixing machines or feeders.

Q. That is mix it into the flour as the flour comes through the mill?

A. As it comes from the rebolter and goes to the

packing room. There is a way, what is known as mixers, that is the more general practice, that is batch mixers. The flour is dumped into a mixer which will contain five or ten barrels and the ingredients added at the mixer, poured into the mixer with the flour.

Q. Then the whole is mixed up?

A. The whole is stirred or mixed up through baffle plates.

Q. Where the mixer is used, is that flour run directly from the mill into such a mixer?

A. It is discharged into a hopper above the mixer, and then into the mixer.

Q. Directly from the hopper?

A. Directly from the hopper, directly from the mill.

Q. Is it a continuous operation?

A. It is a continuous operation, yes, sir.

Q. That is true, whether it is mixed through the mixer or in the stream where it runs into the flour stream?

A. That is true.

Q. Is the making of this self rising flour in any way a milling operation?

Mr. Malone: Now, Mr. Examiner, that is the thing you have to decide. The fact will be stated here and you are just as competent to decide that as the witness.

Examiner Sheppard: I think so. Objection sustained.

Q. Does, or is, the quality of or the grade of the flour in any way changed by this process of mixing or compounding self rising flour?

A. No.

Q. Is there any reduction of the particles or units in this process of compounding or mixing self rising flour?

A. No.

Q. What is a draver, Mr. McLemore?

A. I assume you mean a draver feeder.

Q. All right, sir, what is it?

A. It is a mechanical feeder or device for discharging a given amount of flour per hour into elevators or other receptacles.

Q. Or elevator trucks?

A. Elevator trucks. The way we use it at ours.

Examiner Sheppard: See if you can find a draver on any of those pictures there, and point it out to me. I don't know where it is myself. Find it.

A. I might do it. I am not a mechanical engineer although I have been brought up in the mill.

Q. If you will permit me, I will say the draver is in a lower compartment and not shown in the picture.

Examiner Sheppard: All right, I just wanted to have it pointed out to me. Go ahead, Mr. Bane.

Q. What is the purpose now, of the draver?

A. It is to insure a discharge of a given volume of flour per hour. It is similar to any other feeder, a number of which are made. There are a number of them on the market.

Q. Does it have worm gears in it?

A. Yes, it has, a screw as I recall the construction of the machine, in order to insure a positive amount or a given volume of flour to the opening of the machine.

Q. That is a uniform stream through it?

A. Yes.

Q. Do you use dravers in your mill?

A. We use similar machines. I do not recall whether we have dravers or some other feeder. I think we have some dravers.

Q. Does the draver in any way grind or break up the particles of the product that it is feeding into the elevators?

A. No, it isn't, it has no more abrasive effects than any other screw conveyor would have.

Q. It in no way grinds the particles?

A. No, sir.

Q. Now, Mr. McLemore, as a miller, or as one who has ground wheat into flour and is selling the flour, how does the mill, or how does such a one regard, or does he have any regard for the kind or grade of flour that goes out under various brands, if he has different brands?

A. I think all millers are jealous of the quality of flour put in their given brands.

Q. Why?

A. It is absolutely necessary to maintain quality and uniformity in order to maintain the good will of the consuming public.

Q. Is it true, or not, that the miller attempts to build up the reputation of the mill on the grade and uniformity

of the particular grade of flour he puts out under his various brands?

Mr. Malone: Mr. Examiner, what is the relevancy of that? I do not see the relevancy of that under the complaint. We are not trying the millers or what they do.

Examiner Sheppard: I presume Mr. Bane is trying to show the mill operation in its detail.

Mr. Malone: But, that, we have not as yet objected to, but he is getting into the brands and motives that actuate the millers. I do not see how that is competent.

Examiner Sheppard: I think the answer to the question is evident and I will permit him to answer.

A. Yes, sir.

Examiner Sheppard: It is more or less true of any manufacturer.

A. Yes, true of any product.

Q. Do the millers generally in their process of manufacture, that is, the making of wheat into flour, produce some flour that they do not put out under their own or advertised brands?

A. Yes.

Q. What is done with that flour?

A. Well, some mills make it a practice for selling it for export. Others sell it wherever they can in the domestic markets.

Q. What are some of those places in the domestic markets where they can sell it?

A. Well, of course a great deal of it has been sold in Nashville.

Q. To what character of business?

A. Sold to the blenders here at Nashville.

Q. By blenders, you mean what?

A. By the buyers and sellers of flour here in Nashville who buy flour in jute packages and put it up in their own private brands.

Q. Does that mean those who buy such flour compound it into self rising flour?

A. Yes, sir.

Q. Do you know, Mr. McLemore, whether the mills generally sell flour to such blenders or mixers as you have described, at or below cost, considering the cost of

the wheat and the conversion charge of converting that wheat into flour?

A. I don't know of my own knowledge. We do not sell the blenders at all. I say we do not sell blenders at all. We have made one sale, one or two sales, to my good friend Mr. Faircloth of Birmingham, but Mr. Faircloth bought good flour as I recall.

Q. Mr. Faircloth is connected with what concern in Birmingham?

A. The Cherokee Mills.

Q. What is meant, if you know, Mr. McLemore, by the term "Raw Flour"?

A. I assume merely plain flour without the addition of any ingredients?

Q. Any ingredients such as are added to make self-rising flour?

A. Yes.

Q. Do these persons you have described, or these concerns that you have described as blenders, do they sell in competition with the mills, that, is those who actually grind?

A. Yes, sir.

Q. Do some of the mills, if you know, Mr. McLemore, sell direct to the retailer?

A. More and more so, sir. There was a time when they sold to jobbers, some of them exclusively, but that day has gone.

Q. Do you know whether or not some mills, and when I say mills I mean mills that grind the wheat into flour, some mills sell one hundred per cent direct to the retailers?

A. Yes, sir.

Mr. Malone: Ask him and let him testify. Do not ask one hundred per cent, but what per cent?

Examiner Sheppard: The question is in, let it remain.

Q. What proportion if you know, Mr. McLemore, of the flour sold in these southeastern states is sold by those characterized as mixers or blenders?

A. That would be a pure guess upon my part, Mr. Bane.

Q. Have you nothing to base it upon,—if you have nothing to base it upon or to give us an accurate estimate, we do not want it. If you can give us an accurate estimate I would like to have it?

A. I am afraid I could not give you that, anything that would be dependable.

Q. Could you give it for the country as a whole?

A. I could come nearer giving for the southeastern section than the country as a whole.

Q. If it is not an estimate of some value we do not want it, we do not want just a pure guess. Do you know what character of concern the Brown Milling Company at Las Cassas, Tennessee is?

A. It must be very small, I have not heard of them.

Q. And you have been in direct touch with the millers in the southeastern territory for how long?

A. Over twenty years, and I was with the Food Administration under which Administration we had control of all of these mills, and I do not recall that mill from our survey at that time.

Q. Where is Las Cassas, Tennessee?

A. I do not know.

Q. Mr. McLemore, if you know, it has been testified here, that the Liberty Mills of Nashville, Tennessee, sell flour under several different names, those names being the Cumberland Milling Company, The Model Mills Company, The Nashville Milling Company. Do you know where the Liberty Mills, or how the Liberty Mills got those names?

A. The Liberty Mills bought those various companies.

Mr. Malone: Now may it please your Honor, if he knows that of his own knowledge. I do not want hearsay.

Mr. Bane: I asked if he knew, if he will read the question.

Mr. Malone: Do you know of your own knowledge? I will ask you that now, or by rumor or hearsay.

A. Why, being a mill owner, some of the mills were purchased, perhaps before I had knowledge of it. That is, I would know about the transaction at the time it happened, and I know as a matter of fact these things did happen.

Mr. Malone: How do you know it?

A. I know it from the President of the Liberty Mills, who bought them.

Mr. Malone: You know it from hearsay?

A. The only way I could secure the information.

Examiner Sheppard: I think I will let him testify.

Q. It is general rumor, known for years?
A. Yes, sir.

Mr. Bane: Will you read the question?
(The question was then read to the witness.)

A. They became purchasers of the companies that were formerly operated under those names, and the properties.

Q. Was the Cumberland Milling Company an actual grinder of wheat?

A. The Cumberland Mills, I think was the exact name that they called themselves, I am not sure. It was a grinder of wheat, though.

Q. And it and its properties were purchased by the Liberty Mills.

A. The Cumberland Mills and its properties were purchased by the Liberty Mills.

Q. What about the Model Mills Company?
A. That was also purchased by the Liberty Mills.
Q. Was that a grinder of wheat?
A. Yes, but it has since burnt down.
Q. What about the Nashville Milling Company?
A. That is true also.
Q. The same situation?
A. Yes.

Q. And then the Liberty Mills have continued to pack the brands and sell them, with those they purchased and handled before?

A. I am assuming that from your statement.
Q. I am asking you?
A. I don't know whether they do that or not.

Q. Now, it has been testified here that Ballard & Ballard at Louisville, Kentucky, sell under other names than that of Ballard & Ballard. Do you know whether or not that is true?

A. Yes, I know they sell under the name of The Pioneer Milling Company, I believe Pioneer is the only one of which I have certain knowledge.

Q. That is the only name which you know they sell under?

A. The only one I know personally.

Q. Do you know how Ballard & Ballard acquired that name?

A. No, I do not.

Q. Iglehardt Brothers, that is an actual milling concern, is it?

A. Yes, sir.

Q. Located where?

A. Evansville, Indiana.

Q. It has been testified that they sell under other names than that of Iglehardt Brothers, the names being Brose & Arnold, and Phoenix Flour Mills. Do you know how Iglehardt Brothers acquired those names?

A. They became purchasers of the Brose & Arnold plant and also the Phoenix Flour Mills.

Q. Was Brose & Arnold's plant a plant for grinding wheat into flour?

A. Yes, and still is.

Q. Is the same thing true of the Phoenix Flour Mills?

A. Yes.

Q. It has been testified here that the Columbia Mill & Elevator Company sold under other names than that of the Columbia Mill & Elevator Company. Where is that Company?

A. Columbia, Tennessee.

Q. Do you know what other names it sells under?

A. I would just say that they do not sell under any other names. It may be they are, but I have never heard of it. That was a mill owned by my father, and I have kept in close touch with it.

Q. Then, so far as you know they do not?

A. They do not.

Q. Sell under any other names?

A. Yes.

Q. The Dunlop Mills, or Milling Company?

A. The Dunlop Milling Company at Clarksville. There is a Dunlop Mill at Richmond.

Q. Do you know whether or not the Dunlop Milling Company at Clarksville sells under any other name than that of the Dunlop Mills Company?

A. No, I do not.

Q. Do you know whether it sells under the name of Super Flour Company?

A. I do not.

Q. The Colonial Milling Company, where is that located?

A. Nashville.

J. B. McLemore

Q. Do you know whether or not that concern sells under any other name than that of Colonial Milling Company?

A. No, I do not.

Q. So far as you know, it does not?

A. I have no information on the subject, Mr. Bane, at all. They are mills that have been started since I left here.

Q. Do the millers, Mr. McLemore, that is, those who grind wheat into flour, do they buy flour already ground from other mills?

A. We do not.

Q. Do you know whether or not millers generally do?

A. Not as a general practice, no.

Q. Do they do it at exceptional times, or under exceptional circumstances?

A. I understand that under exceptional circumstances some mills do buy flour.

Q. Do you know whether or not those mills that do buy flour, whether or not it is very exceptional when they do, or is it a usual practice?

A. It is done only under exceptional circumstances.

Q. Such as what?

A. Well, lack of wheat supply of the type that they want, is usually the cause of this outside buying.

Q. Do you know whether or not such concerns are very careful in the selection of the flour they do buy in that way?

A. I have no personal knowledge of that.

Q. Is the quality of or the grade of the flour in any way changed, Mr. McLemore, or are the units or particles in any way reduced by the following process: Taking several grades or kinds of flour, putting them in a mixing machine, stirring them up or mixing them thoroughly running that into a draver, or through a draver into an elevator, then up that elevator and from the elevator onto bolters, or reels, and from those bolters or reels into a bin, and then into a packing machine? Do you understand that question?

A. Yes. Now, the essential characteristics of the flour are not changed at all. There is some little evaporation of moisture ranging from one quarter to three eighths or one half of one per cent. Beyond that, there is no change in the essential characteristics of the flour.

Q. Are there any reduction in the size of the particles?

A. No.

Q. All that any change in moisture contents that you refer to, is due to what?

A. Due to evaporation, as the flour is being inducted, passing through the machinery, it has a certain amount of aeriation.

Q. Due to aeriation?

A. Yes.

Q. The same thing as if flour is left open?

A. Yes.

Q. Is there any difference, Mr. McLemore, in the grade of the flour that would be produced by different mills from the same wheat?

A. Yes, it depends upon the manufacturing efficiency, of course, as to how good their quality is or is not.

Q. Do all mills grind in the same way?

A. No, sir.

Q. Does the method of grinding have anything to do with the quality of the flour that comes out of them, made from the same grade of wheat?

A. Yes, it has a material effect in the production of the final article.

Q. Do you know whether or not the actual grinders of wheat call themselves in many instances, and are known as "Manufacturers of Wheat"?

A. Yes, that appears on practically every letter-head as I recall it.

Q. Now, Mr. McLemore, can you take several different batches of flour, put those batches of flour on a board side by side, smooth them out and look at them either with the naked eye or through a microscope and tell anything about the quality of the flour?

A. None whatever.

Q. Can you, if you put those same flours on a paddle and put that paddle in water, wetting the flour, then taking it out and looking at it, can you tell anything about the quality of the flour?

A. A little, about all you can see is whether it is a more dressed flour or more milled flour, but as to its essential qualities I should say no.

Q. You cannot tell anything, you can tell something about the color by the dressed, is that what you mean?

A. Yes.

Q. Can you, if you let that flour after being wet, does that add anything to your ability to look at it and tell anything about the essential qualities of the flour?

A. Nothing as to the essential qualities. You can get some impression as to its quality because of the color.

Q. But only as to the color?

A. The color is about the only index you get as to its quality there.

Q. If you take some of the flour, Mr. McLemore, and bake that flour into bread, we will say into biscuits, can you, by examining those biscuits tell anything about the character of the flour that those biscuits are made from, as to protein contents, starch contents, moisture content, etc.?

A. No.

Q. Could you tell anything about the quality of such flour by taking dough and boiling it, dough made from the flour and boiling it and then examining it?

A. I don't know. We do not use any such experiments in our own laboratory, and I do not know what advantage might be gained.

Q. If I understand you correctly, the mills, your mill and mills generally, maintain in connection with the mill, a laboratory?

A. Yes.

Q. For the testing and examination of the wheat, is that correct?

A. That is true.

Examiner Sheppard: Do you examine the flour also?

A. We, ourselves, analyze the flour about every three hours to make sure that the milling mixtures have been accurately prepared, the milling mixtures of wheat, before they go to the roll.

Examiner Sheppard: That is, during the process of manufacture?

A. During the process of manufacture we take continuously during the day and also bake the flour every thirty minutes during the night and day.

Q. In your business, Mr. McLemore, do you come in contact with the buyer of flour or buyers of flour?

A. Yes.

Q. Do you from your experience in the business and with such buyers know what the word "mill" or the word "milling" when used in the name of a concern selling flour, indicates or means to the buyer as to the character of that concern?

A. Yes, I think I know that.

Q. What does it mean?

A. The buyer understands it to mean a manufacturer or grinder of flour.

Q. That is one who grinds wheat into flour?

A. That is, one who converts the raw material into the finished product.

Q. Converts wheat into flour?

A. Yes.

Q. Have you, in connection with your experience, in your business, had occasion to learn what the public, the consumer understands by such words when used in connection with the name of a concern selling flour?

A. No, I cannot say that I do, Mr. Bane. I have never made that investigation.

Mr. Bane: That is all.

Cross-examination by Mr. Malone.

Q. Mr. McLemore, you are here attending the Southeastern Millers Convention, are you not?

A. I am here primarily as a result from a summons from the Federal Trade Commission, and I seriously doubt if I would have been, if it had not been for that summons.

Q. But they are having a convention?

A. Yes.

Q. You have not stayed away?

A. No, I have been up there enjoying it very much.

Q. They are all your old friends and associates?

A. Yes.

Q. You were Secretary for years?

A. Yes.

Q. And Secretary of the South Wheat Millers Association for years, weren't you?

A. Approximately two years.

Q. You just run with the millers all the time?

A. No, not as much as I would like to, some though.

Q. You have got no bias at all in your testimony, have you?

A. I have tried not to show any, sir. I hope I am not in that class anyway.

Q. Does the local crop make any difference to you at all?

A. Practically no difference. There was a time when the millers enjoyed quite an advantage from the local crop, but the arm of competition has since length-

ened and there is hardly an isolated spot anywhere that a man can enjoy his own back yard.

Q. What becomes of that local crop?

A. It is shipped to the terminal market. The local miller is now being forced to pay the same price for wheat as anyone else.

Q. Don't he buy the local crop? Don't the local miller buy his local crop, terminally or any other way, don't he buy it?

A. He usually fills his storage if he can secure enough wheat from the local crop, yes.

Q. Of course. Would he go out to some terminal and pay freight when he could have it hauled right to his mill?

A. No, sir.

Q. So, he does absorb it when he can?

A. The local miller in some sections will secure enough wheat to take care of a year's supply. In other cases he will get less than five percent, depending on the location of the mill.

Q. Yes, of course, depending on the location of the mill, the location of the crop and the location of the farmer?

A. Yes.

Examiner Sheppard: I would think, Mr. McLemore, just from a layman's viewpoint, in connection with the question by Mr. Malone that all other things being equal it would pay the miller to buy locally, to save transportation charges he would have to pay if he bought otherwise?

A. Mr. Examiner, that is not true, strictly speaking, as to transportation charges, because those are classed under the milling in transit. The only advantage he has, is, if he can buy direct from the farmer, he thus saves the elevator charges, that is about the only saving he accomplishes.

Q. How do you make self rising flour, do you just put the ingredients in on the hot wet stream?

A. No, with ours we use the batch mixers.

Q. Of course you use it, and don't practically all millers use that? And is not that the only satisfactory way to make self rising flour?

A. I think ninety-five per cent of the millers use that method, and personally I regard it as the only satisfactory way.

Examiner Sheppard: What did you say about the batch mixer?

Mr. Bane: He said they used it.

A. Ninety to ninety-five percent of them use it, that is, the accepted practice.

Q. And the machinery Mr. Bane described to you in your direct examination?

A. Yes, sir.

Q. Now, did I understand you, Mr. McLemore, that millers who use, and by that I mean wheat millers, who use batch mixer systems, we will call it that, that what is just one continuous operation, that they take the wheat, run the stream right on through and then sift it into the batch mixer?

A. Yes. I know of none now, who are doing that.

Q. You think that makes just as good self rising flour as if you change the flour and air it?

A. Yes, I see no material difference.

Q. You say the quality of the flour after it has been put through what I call the self rising milling operation, and what you and Mr. Bane can call it, what you please, you say after you put it through that, there is no essential difference in quality?

A. No essential difference.

Q. It looks very much like it did before?

A. Very much the same.

Q. Not fluffier?

A. No.

Q. No cleaner?

A. No.

Q. Just exactly like when it went in with all the pieces of strings and pieces of wood, little pieces of iron, anything else that came in there, it passes exactly in the same way as it went in?

A. I am assuming that they use streams, on their strings to remove strings, etc. That does not happen in a milling operation, for the simple reason it is never packed. Those things get in through being packed before delivery.

Q. You will concede a string or two now, will you?

A. I do not know anything about strings. I am not a blender. I do not know anything about it. You will have to consult them about that fact.

Q. Well, you were examined as an expert on self rising flour, and an expert on blending plants, I understood Mr. Bane tried to qualify you on that?

Mr. Bane: No, No. I beg to differ with you. I did not try to qualify him as an expert on blending flour.

Examiner Sheppard. I have not understood it that way. I understood and so took Mr. McLemore as being a gentleman who has been in the milling and manufacturing of flour for many years and to that extent his knowledge goes.

Mr. Malone: Well, do you want me to take it back?

Examiner Sheppard: I do not want to limit you?

Mr. Malone: Oh, no.

Examiner Sheppard: I think he is a very competent man, a very competent witness, go your route.

Mr. Malone: He is a very well posted man, Mr. Examiner, and I want to bring out some facts on the other side.

Q. Now, Mr. McLemore, did not I understand you to say that this so-called blending operation, when you put two or more flours in there, that they did not change the quality of the flour in any respect?

A. I don't think it does.

Q. Well, whose process are you speaking about in there?

A. Your own.

Q. You say you do not know anything about the blenders?

A. From my general knowledge of the flour, based on my general knowledge and study of the flour, I would say it would not improve the essential quality of flour at all.

Q. Well then, you are attempting to testify about the blenders operation as well as your own?

A. You can accept the statement and construe it as you like.

Mr. Malone: As he says, he is not an expert, I will move to strike out all testimony in that behalf, Mr. Examiner.

Mr. Bane: Do you want me to argue the motion, Mr. Examiner?

Examiner Sheppard: No, I will let the testimony stand, give it probative value.

Q. Now, tell us about this draver a little more. I

would like to know what it is, because I am not a mechanical engineer. Tell us about that?

A. I assume the reference has been made to the draver feeder, which is a mechanical appliance.

Q. You call it a draver feeder?

A. It is a mechanical appliance for insurance of accurate discharge of so much flour per hour.

Q. Now, what is it like, tell us what it is like?

A. It is just like any other screw feeder.

Q. Like a screw feeder to a flying jenny or anything else?

Mr. Bane: There was no answer to that question.

Examiner Sheppard: Here is a little outline, it may help you in your description, referring to Respondent's Exhibit No. 4.

A. I do not know what kind of screw a flying jenny has.

Q. I am assuming from the impressions in your testimony that it is just a screw that turns machinery. It is more than that, isn't it? What do you mean by that?

A. Yes. It is a screw within a container, the flour being received at the head of this container and through the conveyor, the spiral machine it is discharged at the end of it.

Q. How big is that screw, it is just about as big as your finger, or how big is it?

A. Depending upon the size of the machine.

Q. All right, proportionately, how big is it?

A. Depending altogether upon how much you want to discharge. A draver feeder for phosphate would necessarily have a very small screw, or core, you might say. Whereas, if you want to discharge a large amount of flour, you would necessarily have to enlarge the size of the screw or core.

Q. What is it made out of, India Rubber, Wood, or what?

A. Steel, I imagine.

Q. And you think if that steel core as you call it, ground particles of flour against the side of the steel container, that would not have any effect?

A. It does not grind it. The abrasive effect is so slight as to be infinitesimal.

Q. Why did you say that? Did you ever stand by a draver with a microscope and examine the flour before it went in and when it went out?

A. We have examined flour from time to time, for that matter, but not with any specific idea of testing the abrasive effect.

Q. So, you do not know about that at all, you are just making a mere guess and giving an opinion?

A. I am just telling as well as I can about the action of the machine.

Q. And you have made no test on that point, have you? If so, let us have it.

A. No, we have not made a test. I know the construction of the machine and what would happen to the flour.

Q. Yes, you know it, but cannot tell us why you know it. Now, Mr. McLemore, would a twenty-four hour shift give a mill less unit cost than a twelve hour shift?

A. It ought to, considerably, yes.

Q. Of course it does, and the reason is that all of the overhead and all office charges and everything is the same, except the small labor item on the additional twelve hours?

A. I said it ought to vary materially.

Q. Exactly, and for the reasons I have stated?

A. Yes.

Q. Now, it pays any mill to run on a twenty-four hour basis, does it not?

A. Provided the price structure is not reduced to a basis where it would be unprofitable.

Q. I am assuming that, because it would go into bankruptcy pretty quick, and that would end it. I am assuming that, of course. Does not it improve the quality, to run on a twenty-four hour shift? Can you start up a cold mill and run for two or three hours and produce the same quality of flour as if you put it on a hot twenty-four hour operation?

A. No. Most mills have to take off and send to a special bin the first run in the morning.

Q. So it is an advantage, both as to price and quality to have this twenty-four hour operation, of course assuming that you do it on such a basis that it is not cutting your own throat?

A. Yes.

Q. Now then, don't every mill at times, even running on that basis have a surplus of flour, and I do not mean the refuse, have a surplus of good flour, just as good as its best brands?

A. Oh, yes, nearly every mill has some surplus of flour at times.

Q. And is not it of advantage to that mill to have somebody absorb that surplus at cost or practically at cost, for the advantage that the miller gets on his brands, that he puts out in the unit cost and in the quality, what about that?

A. That is a subject that has been debated pro and con for the last forty years so far as I know. You will find some millers think it is, but others thinks it is better to shut down the plant, rather than sacrifice the price of flour. Those are two economic policies you will find confronting every manufacturer.

Q. I concede that, but I am on this point, that mills who do run twenty-four-hour shifts, I assume they do from your testimony, mills who do run twenty-four-hour shifts, would have a surplus, would they not, that they would not put out under their own brands and have to dispose of in some way. How to do that is a question, how to do that to best advantage. But don't some mills in that condition sell, not their refuse, but good flour to the blenders or manufacturers of self-rising flour?

A. I assume they do, but, we have not sold but in one case.

Q. Yes, you are familiar, however, with the mill game?

A. Yes. I have answered the question, yes.

Q. Now, what did I understand you to say about the one hundred percent retailer business of the mills, selling one hundred percent to retailers?

A. I said there are some mills who sell one hundred percent of their output to retailers.

Q. Now, can you give us, not a guess, but anything like an accurate idea of the percentage of mills who do that? If you cannot, say so. I do not want a guess.

A. It would be more or less of a guess. It would be more or less of a guess as to the number of mills.

Q. Now you say you never heard of the Brown Milling Company at Las Cassus?

A. No.

Q. And if they bought flour from other mills they were just such little fellows that they do not count, is that the idea?

A. I just do not know anything about them.

Q. You do not know anything about them. Mr. Bane was asking you about the Liberty Mills. Is the Cumberland Milling Company in existence now?

A. The Old Cumberland Mills were bought by Fletcher & Wilson, and when the Liberty Mills went into bankruptcy, as you doubtless know, of course that

brought to an end the existence of the corporation of the Cumberland Mills.

Q. My information is, I won't state positively, that they surrendered their charter?

A. I am under that impression, yes.

Q. What about the Nashville Mills that burnt down?

A. Yes, quite a while ago.

Q. So, of course, that is not in existence?

A. No.

Q. About the Model Mills, do you know about them?

A. Also burnt.

Q. So that is not in existence. So, if the Liberty Mills is putting out flour under those brands, to use the word of the complaint, it is putting out under names of alleged corporations that are wholly fictitious and have no present existence, is that a fact?

A. That is true. I do not know how that would be worked out under the Food & Drug Act.

Q. Don't they do business under the name of Mero Mills also, the Liberty Mills?

A. I never heard of it. The Mero Mills were a separate institution here. They either failed or went out of business.

Q. Don't they do business under that name, getting back into a little ancient history, before the present Mero Mills, that you know was organized?

A. I do not recall that. I have no information on the subject.

Q. Now, you say you never heard of the Columbia Mill & Elevator Company selling under any other name than the Columbia Mill & Elevator Company?

A. No.

Q. Now, I understood you to say that millers do buy flour from each other, that we have got that into the record at least, but it is not a general practice only exceptional circumstances, is that right?

A. That is true. You can appreciate the necessity of every miller running his own plant instead of some one else's plant, because he has overhead and employees.

Q. And when he is oversold on a particular grade, he will buy from another miller, who has got it?

A. If he would happen to get in that forunate position, being oversold, on anything, he might buy from others.

Q. Well, did any mills buy any low protein flour last year, on account of the cheapness of prices?

A. I do not know. We did not.

Q. I thought you knew all about the mills. Don't confine it to yourself?

A. I might know something about mills, but remember I am no longer secretary of the association, and facts that were formerly available to me are now closed. They are not telling me as much about their business as they used to.

Q. I expect that is true. They are not telling anybody about some of it. Let us see now, we will get back to the time of your secretarial activities, as long ago as 1924, were not mills buying from other mills, and was not that a practice and matter of some concern, to the South Wheat Millers Association?

A. I do not recall, sir.

Q. Now, I want to refresh your memory about that and hand you a letter dated July 11, 1924, signed by J. B. McLemore, Sec'y, in two pages on the letterhead of the South Wheat Millers Association, Nashville, Tennessee, and see if you can identify that as a letter that you wrote and mailed to Mr. V. S. Tupper and Mr. H. O. Blackwood?

A. The letter was evidently dictated by me and I accept responsibility for the letter, although it happens to be signed, not by me personally.

Mr. Malone: Mr. Examiner, this letter is offered as Respondent's Exhibit No. 5.

Examiner Sheppard: Any objection?

Mr. Bane: I do not see any objection to it, Mr. Examiner, if Mr. Malone thinks it in any way pertinent to his side of the case. I do not see that it is at all relevant or material to any of the issues in this case. The issues in this case involve entirely the use by concerns that do not grind wheat, the words "milling" or "mill," or similar words in the name under which they sell flour. The fact that some mills that grind flour did buy from others, is not material.

Examiner Sheppard: What is the basis, Mr. Malone?

Mr. Malone: The purpose is, Mr. Examiner, the gentlemen spent ten or fifteen minutes asking if we mills have bought flour and if that was only under exceptional circumstances. I offer the letter to show it was a common practice.

Examiner Sheppard: All right.

Mr. Bane: I do not think, Mr. Examiner, the letter shows in any way it was a common practice.

Mr. Malone: The letter will speak for itself.

Mr. Bane: I asked Mr. McLemore the question regarding mills buying flour because of the cross-examination of Mr. McCarthy on yesterday, in which emphasis was laid upon the fact that mills did buy flour. I wanted to know when and to what extent the matter was indulged in.

Mr. Malone: The letter reflects on that proposition.

Mr. Bane: I do not think it does.

Mr. Malone: We have a witness that is more disinterested than Mr. Bane.

Examiner Sheppard: Let it go in for what it is worth. Mark it and admit it to evidence.

Q. Now, Mr. McLemore, referring to Respondent's Exhibit No. 5, I see it was addressed to Mr. V. S. Tupper of the Nashville Roller Mills as well as Mr. H. O. Blackwood. What kind of mill was Mr. Tupper operating at that time, in 1924?

A. I think it was purely a blending plant, so-called blending plant at that time.

Q. But, he was in the Soft Wheat Millers Association, at that time?

A. Yes.

Q. Was he Vice-President and also a member of the Executive Committee of that association at one time?

A. I think he was, yes.

Q. Now, do you know, or have you any knowledge of the fact that the Liberty Mills of Nashville bought three cars of flour from the Consolidated Flour Mills Company, as late as April, 1929?

A. I have no information.

Mr. Bane: Where is the Consolidated Mills?

A. Wichita, Kansas, I believe.

Q. Do you have any knowledge of flour being sold by the Nashville Roller Mills during the present year, to the Bell-Dowling Mills of Springfield, Tennessee?

A. No.

Q. Is the Bell-Dowling Mills of Springfield, Tennessee, a wheat grinding mill?

A. I think it is.

Q. And the Liberty, of course, is a wheat grinding mill?

A. Yes.

J. B. McLemore

Q. Do you know whether Allen Brothers Milling Company of Columbia, South Carolina, is a wheat mill?

A. It has been operating as a wheat mill during the early part of the year. Whether it is still in operation I do not know.

Q. You do not know anything about a purchase of five hundred barrels of flour by that mill in January, 1929?

A. No, sir.

Q. You never heard of that in this territory?

Mr. Bane: Never heard of what in the territory?

Q. Never heard of any such purchase, I mean to say?

A. I will answer it no.

Q. Do you know anything about a sale from the Wells-Abbott & Newman Company of Skyline, Nebraska, to the Dixie Mills Company of Clarksville, Tennessee?

A. No.

Q. Is that a grinding mill, the Dixie Mill?

A. I think it is a small mill.

Q. Do you know anything about a sale from the same people at Skyland, Nebraska, of two hundred ten barrels to the Cedar Hill Rolling Mills, at Cedar Hill, Tennessee?

A. No, I do not.

Q. Is the Cedar Rolling Mill a grinding mill?

A. It was when I was in Nashville. I presume it still is.

Q. Do you know anything about a sale from the Hunter Milling Company of Wellington, Kansas, to the Peters-Bradley Milling Company of Knoxville, Tennessee, of two hundred ten barrels in 1928?

A. No.

Q. The Peters-Bradley Milling Company is a grinding mill, is it not?

A. Yes.

Q. Do you know anything about a sale by the Shellabarger Mills & Elevator Company of Salina, Kansas, to the Gallatin Milling Company of Gallatin, Tennessee, two hundred fifty barrels in April of this year?

A. No, sir.

Q. The Gallatin Milling Company was a grinding mill, was it not?

A. Yes, but it was not operating the last time I was in touch with them. They had the machinery.

Q. And to refresh your memory, or perhaps just

suggest something, has it not been reorganized and started?

A. It has been reorganized once or twice. I don't know about the last one.

Q. So, you do not know whether it is going now or not?

A. No, I do not.

Q. Do you know anything about a sale from the Columbus Milling Company of Columbus, Nebraska to the same Gallatin Milling Company of three hundred fifty bags, February, 1929?

A. No.

Q. Now, that of course is the same Company we were speaking about a minute ago which may or may not be in existence at the present time?

A. Yes, sir.

Q. Do you know anything about a sale of three hundred fifty bags from the Columbus Milling Company just mentioned to this same Gallatin Milling Company in the same month and year, February, 1929?

A. No.

Q. Do you know anything about a sale of three hundred fifty bags from the same people that is the Columbus Milling Company to the same consignee in March, 1929?

A. No, and I might save you a lot of trouble by saying I have no personal knowledge of any specific purchase by any mill at all.

Q. It may be if we keep on we might strike something, strike a chord in the Lyre of memory, something might come up so we will keep going on?

A. Yes, a wonderful thing. Go ahead.

Q. Now, do you know anything about a sale of two hundred fifty barrels from these same people, the Columbus Milling Company of Nebraska to this same purchaser in December, 1928?

A. No.

Q. It is a sort of surprise to you, if we have invoices showing those things?

A. Oh, no. I have stated here time and time again, that mills bought flour. I would assume from the number of purchases that little mill made, they were not operating at the time. I have conceded all that.

Q. I want to show there are a whole lot of exceptional circumstances among the purchases. Now, do you know anything about a sale of two hundred fifty barrels from the same people to the same consignees, in the same month of February, 1929?

A. No.

Q. Well, do you know anything about a sale from the same people to the same consignees of two hundred fifty barrels, May 15, 1929?

A. No.

Q. Do you know anything about a sale of two hundred fifty barrels, from the same people to the same consignee in November, 1928?

A. No.

Q. Do you know anything about a sale of two hundred fifty barrels, that seems to have been their standard order, two hundred fifty barrels from the same people to the same consignee, January 2, 1929?

A. No.

Q. Do you know anything about a sale of two hundred fifty barrels, from the same people to the same consignees, January 17, 1929?

A. No.

Q. Now, we will get off of them for a while. Do you know anything about a sale of two hundred fifty barrels from the Wells Wallgaskey Milling Company of McPherson, Kansas, of two hundred fifty barrels to the Gallatin Milling Company, January, 1929?

A. No.

Q. Do you know anything about a sale from the same people the Wells-Wallgaskey Milling Company to the same consignee of two hundred fifty barrels on December 10, 1928?

A. No.

Q. Now, I believe you said you knew a great deal about the Columbia Mill & Elevator Company because that was your father's old concern. Did I catch that on your direct examination?

A. I have been in rather close touch with them for a good many years, yes.

Q. Do you know whether they wrote a letter under date of September 17, 1928, saying, they were in the market for a car of Short Patent Wheat?

A. No.

Q. Do you know anything about the Columbia Mill & Elevator Company in February, 1929, writing a letter asking for good, clear flour, hard or soft?

A. No.

Q. The Columbia Mill & Elevator Company is a grinding mill, of course?

A. Yes.

Q. What is the Lily Mills of Franklin?

A. Manufacturers of flour.

Q. Wheat grinding?

A. Yes.

Q. Do you know anything about an order of four thousand three hundred ten pounds of flour that the Lily Mills Company bought during the year 1925?

A. No. 1925?

Q. 1925, yes. Do you know anything about it?

A. No, I said no.

Q. Oh, we are going over a lot of years here. Do you know anything about the sale of one hundred barrels of flour to the Cedar Hill Roller Mills, under date of April 11, 1928?

A. No.

Q. I believe you said, the Cedar Roller Mills were a grinding plant?

A. A small plant, I think.

Q. Do you know anything about the sale of eighty-three sacks of flour to the Bell-Dowling Roller Mills of Springfield, Tennessee, in April, 1928?

A. No.

Q. Now, to get onto the mill that you surely know a lot about, did not you, yourself, buy flour from the Acme-Evans Company of Indianapolis?

A. Yes, we bought a little flour back there when we were down. We were rebuilding the mill completely during that period, and having exhausted our supply, the construction being delayed longer than we anticipated we bought some flour from the Acme-Evans Company.

Q. When you bought that flour, did you put it out under your own brands?

A. Yes, we did.

Q. In Interstate Commerce?

A. Yes.

Q. Do you know anything about a sale from the Holden Milling Company of Holden, Missouri, so I have the name here, of five hundred sacks to the Gallatin Milling Company in February, 1929?

A. No.

Q. Or about a sale from the Lexington Mill & Elevator Company of Lexington, Nebraska of three hundred fifty—I don't know whether it is bags or barrels, I will say bags to the Gallatin Milling Company in November, 1928?

A. No.

Q. Do you know anything about a sale from the same consignor to the Gallatin Mill & Elevator Company of three hundred fifty bags, February, 1929?

A. No.

J. B. McLemore

Q. Now, let us come back to the old family mill, the Columbia Milling & Elevator Company. Do you know anything about sale, five sales, made by the Washington Milling Company to the Columbia Milling & Elevator Company in 1927?

Mr. Bane: May I ask the quantities?

Mr. Malone: I have not the data here. I will get that. I have the original stuff here and this is just rough notes and that don't appear.

A. No.

Q. Do you know anything about a sale from the Snell Milling Company to Cedar Hill Mills of one hundred forty barrels in April, 1928?

A. No.

Q. Do you know anything about a sale from the Phoenix Flour Mills of Evansville, to the Middle Tennessee Mills at Lebanon, of one hundred forty-two barrels in December, 1924?

A. No, sir.

Q. The Middle Tennessee Mills at Lebanon is a grinding mill?

A. I don't know. It was at one time.

Q. And is now, so far as you know?

A. So far as I know. It has had a changing existence. It is hard to say.

Q. Do you know anything about a sale from the Phoenix Flour Mills of Evansville to the same consignee of one hundred seventy-nine barrels in November, 1924?

A. No, sir.

Q. Do you know anything about a sale from the same consignor to the same consignee in November, 1924, of two hundred fifty barrels?

A. No.

Q. Or anything about a sale between the same parties of one hundred forty barrels in August, 1924?

A. No.

Q. Do you know anything about a sale between the same parties of one hundred forty-two barrels in November, 1923?

A. No.

Q. Now, we have got to agree that there were a whole lots of circumstances extending over a number of years, haven't we? Have not we, Mr. McLemore?

Mr. Bane: Just a minute. I object to that. There is no evidence introduced to show that a single sale was made.

Mr. Malone: I will connect it up. You can move to strike it out, but the question I will withdraw myself, because it is argumentative, and really sheds no light. I will withdraw it myself.

Q. Now, is there any difference in flour, are all flours just exactly the same, I mean of the same grade, are they all exactly the same?

A. No, there are different types of flour, of the so-called same grades, no two flours are exactly alike.

Q. They differ in protein contents, starch content, ash content, dress and various things of that kind, is not that a fact?

A. That is true.

Q. Now, did I understand you to say that nobody could tell anything about flour by testing it with this so-called water test, paddle test, baking test, etc., how about that?

A. No, I did not make such a broad statement as that.

Q. Let us cut it down. Let us tramp it down. What do you say?

A. In substance I said the essential characteristics of flour could not be determined by paddling in the dust, or in the bit. After all is said and done, of course, baking is the supreme test. The Supreme Court.

Q. That is the supreme test, and I believe you said you baked about every thirty minutes?

A. We bake about every thirty minutes. However, there are certain guides which the chemist gives us in determining the intrinsic work of flour, to determine the intrinsic work of flour is extremely difficult.

Q. When you put out your flour, your chemist with spectacles, microscope, test tube and everything, has gone over your flour, and it has all been tested and is exactly right?

A. We hope so.

Q. If you should so far relax as to sell to a blender, would not he have all the advantages of the tests you have made?

A. Yes, if we are honest with him, tell him the truth about it.

Q. Far be it that the Southeastern Millers Association would ever deviate from the path of rectitude?

A. You are assuming a degree of virtue that does not exist in this old world.

Q. Yes, but I was giving you the benefit of the doubt?

A. I thank you.

Q. I will ask you about another very broad statement you made here a while ago, that all buyers understand the word mill, when used in a company's name, all buyers, no exception, understand that that means a wheat grinding mill that is making flour, etc. Let us trim that down?

A. He asked, if I recall the question, if I visited or came in contact with certain buyers. It naturally presupposes I was answering the question so far as my personal contract with the buyers went, I am not speaking for the whole world.

Q. The way my notes got it, you were speaking for the universe. So you want to trim that down?

Mr. Bane: I asked the question, in his experience.

Q. Of course, people buying from a wheat mill naturally expect it to grind wheat?

A. I think they have a right to expect it.

Q. That is your line of customers, people who buy from you, a wheat mill?

A. Yes.

Q. And those are the folks you were speaking about?

A. Yes, sir.

Mr. Malone: No further questions, Mr. Examiner.

Redirect Examination by Mr. Bane:

Q. Have you got your subpoena with you, Mr. McLemore?

A. No, it is up at the hotel room.

Mr. Malone: If you say he was subpoenaed, I concede that.

Mr. Bane: The question was raised. He was subpoenaed about Thursday of last week, the subpoena being mailed out and I will say for myself, at the time Mr. McLemore was subpoenaed and I handled the correspondence with you as to the date of the hearing, I did not know the Southeastern Millers Association was meeting in Nashville, Tennes-

see, but when I got down here and talked to Mr. Samples of the Southeastern Millers Association, he was very much agitated that there was a conflict between the hearing and the meeting of the Southeastern Millers Association.

Mr. Malone: So far as the statement is relevant, I concede that.

Q. Does the miller, Mr. McLemore, buy the local crop, if the local crop is not of the grade and quality of wheat that he desires for flour?

A. The wise miller, does not.

Q. He does not have to buy that local crop, does he?

A. No.

Q. I understood you to say that in your plant you used the mixer in the separation of your self-rising flour?

A. That is true.

Q. And you have been making, your plant has been making self-rising flour for how long, ever since you have been with it?

A. Yes, and for many years before.

Q. You have observed frequently, have you not, the result of the mixing process through which you put the flour in making that self-rising flour?

A. Yes, we check that end of our work rather carefully.

Q. And have tests been made on it in the laboratory?

A. Yes, sir.

Q. And you have seen the results of those tests?

A. Yes.

Q. So, you do know the result of the process?

A. Yes, sir.

Q. I do not know whether I got the correct impression from your testimony with reference to the purchases of plants by the Liberty Mills which purchased, as I understand, the plants, the names and good-will and brands of these concerns that were enumerated to you, and of which you spoke in your direct examination. Is that true?

A. That is true.

Q. Do you know whether or not it has continued since it purchased those names, plants, etc., putting out flour under the names and brands which it purchased?

A. It did under the old management. I have no knowledge of the more recent management.

Q. Do you know whether or not Mr. V. S. Tupper of the Nashville Roller Mills, Nashville, Tennessee, ever operated a mill actually grinding wheat into flour?

A. Yes.

Q. When?

A. I do not recall when this mill was destroyed, but he had about a two hundred fifty barrel mill at one time.

Q. Do you know whether or not he has such a mill now?

A. No, he has not.

Q. Has he had within the last four or five years?

A. No.

Q. What sized concern is the Cedar Hill Mills?

A. A very small mill.

Q. What sized concern is the Peters & Bradley Milling Company?

A. Peters & Bradley Company, I think they style the mill.

Q. What size is that?

A. Two hundred fifty barrel mill.

Q. Is that considered a large mill, a medium sized mill or a small mill?

A. Small.

Q. What size mill is the Gallatin Mill?

A. Small, about one hundred seventy-five or two hundred barrels, as I recall.

Q. That I believe you say has had a very checkered career, has it?

A. Has, recently.

Q. Do you know what sized mill the Middle Tennessee mill is?

A. The capacity of that mill has been reduced. I do not think it is over one hundred fifty to two hundred barrels at the present time.

Q. That is a very small mill?

A. A small mill, too.

Q. You say it has been reduced, did it have a larger capacity?

A. It had a larger capacity.

Q. What size?

A. Four to five hundred barrels.

Q. Is that a medium sized, a large mill or a small one?

A. A medium sized mill in this section of the country.

Q. Now, assuming, of course there has been no evidence introduced here to show any sale made in any of these instances as suggested on cross-examination by Mr. Malone, but if we assume that a sale was made in any of those instances, do you know anything about the

reasons or circumstances which actuated the purchases by the concern that was a Rolling Mill, if such purchase was made?

A. No, I would have to draw on my imagination as to whether it was financial reasons or what.

Q. You do not know that?

A. No, sir.

Q. Do you know if these purchases were made by the concerns enumerated by Mr. Malone, whether or not the concerns sold the flour or what they did with it?

A. No.

Q. Do y u know if they did resell the flour whether they sold it under their own names and brands, or under the names and brands of the concern from which they purchased it?

A. I do not.

Q. Do you know whether or not in selling that flour they sold it with a label or wording on the label which indicated in any way that they did not manufacture it, but it was manufactured for them and they were merely distributing it?

A. I do not.

Q. You do not know if it was sold by them, if so, how they sold it or on what representations, do you?

A. No.

Q. Of course I am referring to the concerns, especially that one purchase by your Company, that is what you were referring to?

A. Yes. Of course I know what happened there.

Q. In your own Company?

A. Yes.

Q. That flour your Company purchased, did your Company have a laboratory test made of that flour?

A. Yes, that was about the only flour we did purchase and accept. We had to reject other flour. We made one or two other purchases but accepted the Acme-Evans Flour.

Q. You rejected the others and accepted that as the result of your laboratory tests?

A. Yes.

Q. A laboratory test was made to see that the flour came up to the quality and standards that you wanted?

A. Yes.

Q. Do these blenders, that is, these people who buy flour and mix it, either as plain flour or a self rising flour, and sell it, compete with you?

A. Yes.

J. B. McLemore

Q. And your answers to my questions as to what the buyers you would come in contact with, and what you would find the buyers to understand by certain words, is based wholly on your experience in coming in contact with the trade and with the buyer of flour?

A. That is true.

Mr. Bane: That is all, Mr. Examiner.

Recross-examination by Mr. Malone.

Q. The small mills compete in this territory, just like the big ones?

A. I think so in a restricted way. They have of course a restricted circle of influence.

Q. You do not know how they put out the flour they buy, but just state you do know what you do with yours?

A. Yes.

Q. And how you put it out?

A. Yes.

Mr. Malone: That is all.

Examiner Sheppard: Only one question, Mr. McLemore. If a manufacturer of flour decides to go into the production of self rising flour or process flour, could he do that with his machines that he has used in the production of plain flour?

A. He would use the same machines for the production of the plain flour that he had previously done. He would divert the flour to the mixers, which are rather simple machines.

Examiner Sheppard: In other words, if the manufacturer of plain flour wants to go into the production of processed or self rising flour, he has to add other machinery?

A. He has to add mixing machinery, is all.

Examiner Sheppard: All right.

Redirect Examination by Mr. Bane.

Q. What do you mean by processed flour?

A. Processed flour does not mean anything more than that the flour has been handled twice, bought in jute sacks of one hundred forty pounds, run through the mixing machines and packed out suitable for the family trade. That is what we usually call processed flour.

Mr. Bane: That is all.

Recross-examination by Mr. Malone.

Q. Any phosphate added?
A. That would be another step in the turning of flour.

Redirect Examination by Mr. Bane.

Q. Do the mills add phosphate to the flour?
A. Yes, most of them.

Mr. Bane: That is all.

Witness Excused.

G. A. SUTER, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, please, Mr. Suter?
A. I live on Brightwood Avenue, now.
Q. Brightwood Avenue, in Nashville?
A. Yes, sir; 3036.
Q. What is your business?
A. Bakery.
Q. Is that bakery operated under your name as G. A. Suter, or operated by a Company?
A. Yes, G. A. Suter & Son.
Q. G. A. Suter & Sons?
A. Yes, sir.
Q. Where is that bakery located?
A. 1520 Church Street.
Q. Nashville, Tennessee?
A. Yes.
Q. In your business do you buy flour?
A. Yes.
Q. Do you buy both self rising and plain flour?
A. No, sir; we don't buy no self rising.
Q. You buy which?
A. We don't buy no self rising. We don't sell any.
Q. You don't sell any flour?
A. No, sir.
Q. You just buy for your own use?
A. Yes.
Q. And buy for your own use the plain, and not the self rising?

G. A. Suter

A. Yes, sir.

Q. How long have you been in the bakery business in Nashville, Mr. Suter?

A. About twenty-two years.

Q. What does the word "mill" or the word "milling," when used in the name of a concern selling flour, indicate or mean to you as to the character of that concern?

A. Well, I have always understood a mill or miller ought to be when they grind the wheat.

Q. Grind the wheat into flour?

A. Yes.

Q. Do you consider it any advantage to you, or do you prefer to buy wheat or rather flour, from one who grinds wheat into flour, rather than one who buys flour from some one else and mixes it?

A. Well, I have got good flour from both parties, but I think it ought to be an advantage to me to buy from the miller.

Q. Which do you prefer to buy from?

A. Of course I made the statement there, I was under the impression I bought from a miller sixty per cent, but I have found out since Mr. McLemore says they used to grind wheat but don't grind now—

Q. What concern is that?

A. The Nashville Roller Mills.

Q. You have been buying sixty per cent of your flour from them?

A. Yes, for the last eight or ten months.

Q. You were under the impression that they did what?

A. That they milled their own wheat.

Q. They are located here in Nashville, aren't they?

A. Yes.

Q. Have you bought from any other Nashville concerns?

A. Yes.

Q. Do you know whether or not they were blenders or millers?

A. I know they were blenders.

Q. Why did you stop buying from them?

A. Well, at times it was not uniform.

Q. The grade of the flour was not uniform?

A. Yes, and sometimes the price made the difference.

Q. Do you find, or do you think you get more uniform grades and better flour from those who grind the wheat than from the blenders; is that your impression?

A. Yes. Of course the worse flour we ever got was from a mill which,—of course one advantage is if you buy from a Nashville concern, if we get a bad lot of flour we call up in the morning and they come and get it. If you buy a carload from the mill, and it is bad flour, you have to put your money down before you get your flour, and after you put your money out once you cannot get it back, and have to use it up.

Q. You have a hard time getting it back?

A. Yes, sir.

Q. That does not answer the question?

A. I know it don't. I have got friends here, I have got to protect them, too.

Q. Regardless of your friends, Mr. Suter, and your desire to protect them, all I want is the truth, regardless of where the chips fall?

A. I will give you the truth.

Q. Do you have any preference, or did you before you learned today, that the Nashville Roller Mills was not grinding the flour it sold you, did you have any preference as to whether you should buy from a mill actually grinding wheat or whether you bought flour from such a mill or plant which blended and mixed up?

A. Since I have found out the difference, I would rather buy from the blender.

Q. Since you found out?

A. Yes, sir.

Q. Before that time did you have a preference?

A. Yes.

Q. What was that preference, which did you prefer to buy from one that ground the wheat or from the other?

A. I was under the impression one could better deal with the miller, could get a better price from the one who grinds the wheat.

Q. For that reason you preferred to purchase from the miller that grinds?

A. Yes, but since we got such good satisfaction out of this mill,—

Q. What do you mean, the Nashville Roller Mills?

A. Yes, sir.

Q. That does not grind the wheat?

A. I thought they did.

Q. You thought that from the name of the concern?

A. No. I know they used to grind wheat.

Q. What concerns, you said you bought from other concerns in Nashville, what other concerns were they?

G. A. Suter

A. I bought some from the Snell Milling Company, the Watauga Mills, and the State Milling Company.

Q. Were those concerns the ones from which the flour was not up to standard and uniform and which you would have to return?

A. Now and then.

Q. You state you stopped buying, and if I understood, because the flour was not satisfactory, from what you thought or understood were blenders?

A. Yes, sir.

Q. Were they the concerns?

A. I expect they are the same, probably.

Q. A little bit more than your expectations, I want your knowledge, not your guess, if you know, tell me?

A. I guess that was one reason.

Q. They are the concerns to which you referred?

A. Yes, sir.

Q. Naturally you heard here this morning that the Nashville Roller Mills did not roll or grind wheat into the flour which it sold; had you arrived at any determination with reference to your buying of flour or the source from which you would buy?

A. No, sir; I have made no plans for that.

Q. Had you arrived at any determination as to whether or not you would deal with blenders?

A. I have not made up my mind to that effect.

Q. You have not?

A. No.

Q. From what source do you buy flour?

A. We buy from the Nashville Roller Mills, Pillsbury and the Red Star Mill.

Q. Do you know whether or not the Pillsbury Mills are a mill that grinds wheat?

A. Yes.

Q. It does?

A. Yes, sir.

Q. That is your understanding?

A. Yes.

Q. How about the Red Star Mills?

A. The same.

Q. That is your understanding?

A. Yes.

Q. How long have you been buying from those three concerns, the Nashville Roller Mills, Pillsbury and Red Star?

A. Oh, up to ten months ago we bought nearly all our flour from the Red Star, for two years.

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Q. Is it true you bought from this Company in the past two years?

A. We have a small contract with the Red Star and Pillsbury.

Q. You say those three concerns cover your purchases for the last two years?

A. Yes, sir.

Q. You live here in Nashville?

A. Yes, sir.

Q. Know the conditions around Nashville?

A. Pretty well.

Q. And you knew of course that there were quite a number of concerns in Nashville using the word "mill" or "milling" in the name under which they sold, that did not grind wheat into flour, did you not?

A. Yes.

Q. You have known that for some time?

A. Well, yes.

Q. How long had you known it?

A. Oh, I guess the last year or two.

Q. You have known it for the last year or two?

A. Yes. Before I did not pay much attention to it.

Mr. Bane: That is all.

Cross-examination by Mr. Malone.

Q. What brought it to your attention, that questionnaire that the Federal Trade Commission sent you?

A. Well, it brought it to my mind.

Q. You say the worst lot of flour you got was from a wheat grinding mill?

A. Yes it was.

Q. You can get bad flour from anybody?

A. Oh, yes.

Q. When you deal with the miller it is in carload lots?

A. Yes.

Q. And you never get it back?

A. Yes.

Q. What did you say?

A. I said yes.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. What mill was that?

A. That was from a Texas mill.

Mr. Bane: That is all.

Witness Excused.

L. F. METCALF, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Metcalf?
A. Greenville, Alabama.
Q. Your business is what, Mr. Metcalf?
A. Wholesale Grocery.
Q. How long have you been in that business?
A. I have been in that business since 1921.
Q. Since 1921?
A. Yes.
Q. Through what section or territory do you sell?
A. Well, in the three counties right around me, Butler, Crenshaw, and Lowndes.
Q. Do you sell outside of the State of Alabama?
A. No, sir.
Q. Is that business operated under your own name or some firm?
A. No, sir; I own it.
Q. It is operated as L. F. Metcalf?
A. L. F. Metcalf, and I am the sole owner.
Q. What do you use, L. F. Metcalf Wholesale Grocery Company?
A. L. F. Metcalf, and right under that is Wholesale Groceries, that is the style of the firm.
Q. Do you handle flour?
A. Yes, sir.
Q. Plain and self rising?
A. Yes, and baker's supplies.
Q. What does the word "mill" or "milling" used in the name of a concern that sells flour, mean to you?
A. That means that they grind wheat into flour.
Q. Does the use of either of those words in the name of a concern selling flour, convey or have any influence on you in making purchases of flour?
A. No, sir.
Q. It does not?
A. I know the difference, know who I am buying from.

Q. You investigate and find out?

A. I know, yes.

Q. Do you deem it to your advantage to buy flour from a mill or a concern that actually grinds wheat into flour, rather than one that buys flour and mixes it up.

A. Yes, I have had better success dealing direct with the mills.

Q. Why?

A. From the fact I do not sell much low grade flour. I buy all high grade products, and the trade I have wants good flour.

Q. Do you find any difference in the uniformity of the flour coming from the blender and coming from the mills?

A. I could not say, because the cheaper grades at times I buy from the blender.

Q. From whom do you buy?

A. Globe Mills, Inc., Loudonville Milling Company, Consolidated Mills of Wichita, Kansas.

Q. Do you know whether or not they are grinders or blenders?

A. They are millers.

Q. They are millers, grinding wheat into flour?

A. Yes, sir.

Q. Have you, Mr. Metcalf, bought any flour from concerns in Nashville that were not grinders of wheat?

A. Yes.

Q. When was that?

A. Four years ago I bought from the Colonial Milling Company and then bought from the Snell Milling Company after that.

Q. How long ago did you buy from the Snell Milling Company?

A. Up to about three years ago. I bought about a year or a year and a half from them.

Q. Have you ever had any complaint from your customers about flour coming direct from millers grinding wheat?

A. No, sir.

Q. Have you had complaint about flour that you bought from the blenders?

A. I had one complaint, and they took up the flour.

Q. What company?

A. The Snell Milling Company, only a small amount, about ten or twelve barrels.

Q. When was that?

A. About two years ago, maybe a little over that. I

don't know exactly. I did not pay attention to those things.

Q. Do you come in contact with your customers, or the trade to whom you sell?

A. I don't, no sir.

Q. How is that?

A. I don't sell many goods myself.

Q. Do you know, or have you in your experience found out what the use of the word mill or milling in the name of a concern selling flour means to your customer, as to the character of the concern that puts that flour out?

A. They tell you they believe it is a mill actually grinding and making wheat into flour.

Mr. Bane: That is all.

Cross-examination by Mr. Malone.

Q. You say you do not come into contact with the selling end of it?

A. No, sir; I sell very little goods myself. I have throat trouble and don't want to talk much.

Q. And your last statement is based on what small contact you yourself have had?

A. Yes, sir.

Q. Was your brother at one time operating the Hope Milling Company?

A. Yes.

Q. Was that a grinding mill or blending?

A. I don't know. I don't know anything about his relations with his milling concern, because I never did associate myself with him in business.

Q. So, you do not personally know he was operating a so-called blending plant?

A. No.

Mr. Bane: If he was.

A. I don't know what he was. I don't know what kind of plant. I knew he was interested with Mr. Hope, but I did not know what kind of plant they had.

Q. You understand that the word "mill" has more than one meaning, don't you?

A. I never did look it up and try to define it.

Q. I just want to call your attention to that. When we do not know what a word means, what do we usually do?

A. Well, you take the word "mill," that would mean a plant actually grinding wheat, is what I would term it.

Q. I understand, but if you wanted to be certain, what would you do?

A. Go to the dictionary.

Q. Of course. Let us go to the dictionary for it. Now I am quoting from the old book we were all brought up on here in the south, Webster's Unabridged Dictionary and of course this is subject to verification:

> Mr. Bane: I don't question the fact you have it right, at all, sir.
>
> Mr. Malone: I think it is accurate.
>
> Mr. Bane: I do not question the fact at all. I do not see the need, not unless you want to lay it as a basis for something else, because we will all take notice of what the dictionary says, unless you wish to use it as a basis for a question.
>
> Mr. Malone: I want to go over that a little with Mr. Metcalf. We will go to the dictionary and see what it says.

Q. Now, after defining a mill, first for grinding any substance, as corn, grain and so on, that is the first, primer definition, we find this:

> "In modern usage the term mill includes various other machines or combinations of machinery, which resemble the flouring mill, and to which the term was first applied, not in its circular crushing or grinding action, but in the more general one of transforming some raw material by mechanical process into a state or condition for use; as saw mills, cotton mills, silk mills, fulling mills, oil mills, slipping mills, powder mills, etc.; and to some of which the term manufacturer or factory is also a guide."

In other words, our old friend Webster says that in modern usage a mill is not only something that grinds flour but it is something where you take raw ingredients and turn out some kind of finished product. You are familiar with the word used in that sense, are you not?

A. Well, as I understand it, a blending mill is what you want to know about.

Q. No, I am asking you now, we are on the definition of the word "mill," if it has not got two different terms?

A. It may have several different meanings, a word in

the English Language may have a dozen different meanings.

Q. Let us quote from Mr. Webster, some more:

"The building with its machinery where grinding or some process of manufacturing is carried on."

A. That is true, yes.

Q. Now, we will turn to Funk & Wagnall's Standard Dictionary:

"Any one of various kinds of machines that transform raw materials by other processes than grinding into some other form, as a saw mill, a planing mill."

You understand that is also true?

A. It takes different machinery to finish the product.

Q. Exactly. I want to know what you think about it. And when you put in your ingredients into this different kind of machinery and turn out a different product, that is a mill isn't it?

A. I cannot tell about that now, I will let them pass on it, I am not defining mills. You know it has been thirty odd years since I have studied the dictionary, and I have been studying how to make money ever since.

Q. Well, that is true, but my able friend over here made you define it the way he wanted you to, didn't he?

Mr. Bane: I object to that. I did not make him define it. I asked him as to certain terms and left it up to him and he very well defined it. He is now being tried to make the definition in some other way.

A. My understanding of a flour mill is one who gets the wheat and makes it into flour and then the blender buys that flour from that mill, and then he finishes it in what kind of product he sees fit to.

Q. He buys the ingredients and other machinery and turns out a finished product?

A. Yes.

Q. Now, let us look at the Century Dictionary:

"A machine which transforms raw material by a process other than grinding into forms fit for usages for which the raw material is unfit."

Would that comport with your idea?

A. Well, you would have a blending plant, is what you would have.

Q. You would have separate machinery?

A. Yes.

Q. Put in the ingredients and turn out a finished product?

A. Yes, change it from the form it was originally put in.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. You state you have never gone to the dictionary to look at the meaning of the word "mill" or "mills" as used in the flour industry, as I understand?

A. That is right.

Q. You did not think enough about what the word meant when used in connection with the flour industry to require you to go to the dictionary?

A. No, sir.

Q. You thought you knew?

A. I thought I did.

Q. That was the result of your experience in the business, wasn't it?

Mr. Malone: Let him state, don't lead him.

A. When a firm advertised as being millers, I judged that they took the wheat and ground it into flour and sold to the trade in that form.

Q. And the same thing is true when they used the word "mill" or "milling" in the name under which they sell?

A. Yes, sir.

Q. Now, Mr. Metcalf, state whether or not some of your customers bought flour from concerns in Nashville that do not grind wheat but simply blend it, but use in the name under which they sell the flour, the word "Mills", "Milling" or "millers", were your customers under the impression that if so buying they bought from a concern actually grinding wheat into flour?

A. Yes, they believed when the words "mill" or "milling" is used that they are buying from a person that actually makes wheat into flour.

Q. And you know some of your customers bought from concerns in Nashville under that impression?

A. Yes, sir.

Recross-examination by Mr. Malone.

Q. What do you tell your customers when you try to sell a product from the mill as compared with the blender?

A. I have got my product pretty well established. I do not argue about the other fellow's merchandise. If they want to buy from blenders their flour, it is all right with me. I try to sell them what I have got. I do not say anything in that respect, I let them run their end. They may sell their blenders flour, I sell the millers flour. I let them use their argument and I use mine.

Q. Does the Loudonville Milling Company furnish good flour?

A. They have so far.

Q. Do you consider that a very reliable Milling concern?

A. Yes.

Q. They furnish first class flour?

A. Oh yes.

Q. Do you know whether they sell any of their short patent flour to blenders in Nashville?

A. No, sir.

Q. If they do, the blenders get a mighty good flour?

A. Yes, sir.

Mr. Malone: Yes, that is all.

Mr. Bane: I move that we adjourn until two o'clock.

Mr. Malone: That is satisfactory.

Examiner Sheppard: We will now take an adjournment until two o'clock P. M.

(Thereupon at one o'clock P. M. an adjournment was taken until two o'clock P. M. this date; at which time, pursuant to adjournment the further hearing of this case was resumed.)

Present: As before.

Whereupon, C. M. STARKS, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Starks?

A. Blakely, Georgia.

C. M. Starks

Q. What is your business?

A. I am manager of the Blakely Wholesale Company a corporation, wholesale grocers.

Q. Located at Blakely, Georgia?

A. Yes.

Q. How long have you been connected with that company?

A. Five years.

Q. How long have you been manager of it?

A. Five years.

Q. Where is the territory through which the Blakely Wholesale Grocers sell?

A. Sell five counties, Early, Calhoun, Clay and Houston County, Alabama.

Q. Do you handle flour?

A. Yes.

Q. Plain and self rising?

A. Yes.

Q. What does the use of the word "mill" or the word "milling" in the name of a concern selling flour indicate or mean as to the character of that concern, Mr. Starks?

A. Well, it would indicate one who ground wheat into flour, but I do not understand it as such, because of my experience. I understand it is one who grinds wheat into flour or mixes it, or blends it.

Q. You, in other words, have found or learned that some concerns who do not grind wheat into flour also used that word, is that what you mean?

A. Yes.

Q. Which do you prefer to buy from, Mr. Starks, a concern actually grinding the wheat into flour, or from one who buys the flour from a grinder and then blends it or mixes it?

A. Well, I have always preferred to, and nominally I do buy my flour from a mill who buys its own wheat and makes it into flour.

Q. Why?

A. Well, because ordinarily we should be able to get a wider range of brands and quality in one car, and thereby reduce our investment in flour. But I have learned from experience there are times of the year and seasons when that is not true.

Q. How do the two character of concerns compare as to uniformity of grade?

A. Well, I don't see so much difference.

Q. You have not?

A. I know nothing about the flour so far as that is concerned. I just handle it for re-sale.

Q. You just buy and sell?

A. Yes.

Q. What Nashville concerns do you buy flour from?

A. I have never bought but from one, the Nashville Roller Mills.

Q. Is that a grinder of wheat into flour or a blender?

A. It was originally a grinder of wheat into flour, but is now a blender.

Q. Has it been a grinder of wheat at any time during the time you have been manager of the Blakely Wholesale Grocery Company?

A. No, sir; during my experience as a groceryman, it has, but not during my management of the wholesale business at Blakely.

Q. Do you come in contact with your trade, your customers?

A. Very little, sir. The slow ones and bad eggs I take over after the salesmen have slipped up with them.

Q. You mean by that the slow ones in pay?

A. Yes.

Q. Do you sell?

A. I sell them a little, as much as they pay, yes.

Q. From the experience you have had with your customers, do you know that your customers understand as to the character of the concern, when the concern selling flour uses in its name the word "mill" or "milling"?

A. Nothing more than what I have frequently heard them say.

Q. What is that?

A. When I quote my price, he will rear back and tell me what his mill quotes. I know he took my money, sold my flour, to raise the Bill of Lading, in taking this flour out of the depot, that is the slow man, I know him. He thinks that is a sure enough mill.

Q. Does he think that is an actual grinding mill?

A. Oh yes, I think he thinks it is one of the largest in the country.

Q. Do you know whether or not it is a blender or a grinder?

A. I don't pay much attention to it, ordinarily. I think it is a typewriter blender, is what it is.

Q. What do you mean by a typewriter blender?

A. I mean one of these blenders who buys a typewriter, hires a stenographer and goes into the Rolling Mill business by buying a little flour and shipping it.

Q. You mean one who buys a typewriter, hires a stenographer and adopts a name with the word "mill" in it?

A. I don't know that he puts "mill" in it. He ships flour to my customers, whether he does or not. What I kick on is he owes me money, takes my money to raise that Bill of Lading with it.

Q. Do you know of any concern whose name you have seen on flour that the customer has pointed to under such circumstances?

A. No, sir. There are so many of them you could hardly remember, it has been numbers of them which I could give, I think I have a number of them on a piece of paper.

Q. All right, will you give them please?

A. I copied them from the depot one day off some shipments in there, some names, if I have them. I don't happen to have them right now, therefore I cannot remember them, but I thought I was going to preserve that.

Q. Suppose I ask, do you remember the Wautauga Milling Company?

A. Not recently, we used to have them.

Q. They were one?

A. Yes.

Q. Star Mills, was that one?

A. Yes.

Q. Modern Milling Company?

A. Yes, I recall that.

Q. Do you recall the F. J. McCarthy Milling Company?

A. No.

Q. Do you recall the Nashville Roller Mills as one of them?

A. Not only to myself, yes.

Q. Only to yourself, but not among customers?

A. No, sir.

Q. Do you recall the Cherokee Mills?

A. Yes.

Q. Do you recall the State Milling Company?

A. Yes, I remember that, but there were numbers of others.

Q. The Southern Milling Company?

A. Yes, I think I remember that.

Q. The Southern Flour Mills Company?

A. No, I don't remember that.

Q. The American Milling Company?

A. No.

C. M. Starks

Q. From what character of concern do you buy your higher grade of flour?

A. Most all my high grade flour that I have sold have been the Valier & Spears, and the Plant Flour Mills of St. Louis.

Q. Are they grinders, do they grind wheat into flour or are they blenders?

A. That is my impression, they are grinders.

Q. Why do you buy your high grade flour from the grinders?

A. Well, I don't know, we were able to put it over or do it. It was a popular flour, it had quality and repeated and we continued to buy. As I said a while ago it frequently happens you can reduce your investment on your stock of flour by getting various flours from one mill.

Q. Various brands of flour that you would sell?

A. Yes, that may be true, however, of a first class blender, I would think.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Cross-examine him.

Cross-examination by Mr. Malone.

Q. Mr. Starks, I did not quite catch about that list of names. You do not mean to say that the Cherokee Mills and Wautauga Mills are desk mills?

A. No. No, I did not mean that. I mean there are any number of salesmen touring your territory when money is scarce, in times like this, and it is hard to get, selling two barrels of flour to the weak retailer and shipping it, Order Notify, thereby reducing the opportunity of the jobber to even make expenses in times like this, to say nothing of the legitimate mixer and miller who otherwise would be entitled to that business.

Q. You know of course Mr. Tupper and Mr. Faircloth who run the Cherokee Mills, have a large plant?

A. Yes.

Q. And the Wautauga Mills?

A. Yes, the Cherokee Mills has quite a big business in my territory.

Q. In giving that list you did not mean to say they were of that sort?

A. I would like to say here, if any such impression as that went out from me, I would like to change that. There has never been a time since I have been in business that there was not some of the Nashville flour in our place.

Q. You did not mean to say that any of these were desk mills?

A. I did not mean that.

Q. You do not mean either one way or the other?

A. Just from the general impression of the effect of their business on mine in my territory, I would infer that they could not exist on the profit they would get on a brokerage basis on the business they do in my territory.

Q. Of course you do not know whether they sell direct to the retailer or not?

A. Yes, they do.

Q. The brokerage item is omitted?

A. I mean to say they sell on a brokerage basis, they do not sell on a jobbing or milling basis, but a brokerage basis.

Q. What do you mean by that?

A. I mean the miller and legitimate dealer in flour, no matter who he is, tries to get a fair profit. From my standpoint I would say ten percent would not be too much, at times like this you cannot get it, but a legitimate profit.

Q. So some of these people cut under that, and come up to these small merchants selling them cheaper, selling them two barrels or more, very cheap?

A. I mean to say they could not exist on the profit they make on a two barrel sale, as they sell it.

Q. But the fact is, I was talking about the fact that some of these people do sell these small buyers on a very cheap basis?

A. Oh, yes; in very small quantities.

Q. That is what I mean, in very small quantities and very cheap. How long have you been buying flour from the Nashville Roller Mills?

A. Ever since we were incorporated, five years.

Q. Do you find that satisfactory?

A. Absolutely.

Q. Satisfactory to your customers?

A. Yes.

Q. A high grade flour?

A. Yes.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. Does the Nashville Roller Mills sell to the retail trade in your territory?

A. No, sir; they do not.

Mr. Bane: That is all.

Witness excused.

M. J. GRIST, being produced, sworn and examined on the behalf of the Commission, testified:

Redirect Examination by Mr. Bane.

Q. Mr. Grist, where do you live?
A. I live at Dillard, Georgia.
Q. What is your business?
A. General Store.
Q. General Merchandise?
A. Yes.
Q. Retail?
A. Yes.
Q. How long have you been in that business?
A. I have been in business six years.
Q. Six years?
A. Yes.
Q. Is that business operated under the name of J. M. Grist, or do you operate under a trade name?
A. I operate under the name of M. J. Grist at the present time. The first two years it was the Grist Grocery Company, but I bought the store out myself and operate it for myself the last four years.
Q. You are in the retail general merchandising then?
A. Yes, sir.
Q. Do you handle flour?
A. Yes, sir.
Q. Both plain and self-rising?
A. Yes. I do not handle very much self-rising flour, as the territory I sell flour in is not strong on self-rising, but I keep some most of the time.
Q. Where is Dillard, Georgia, with reference to Atlanta?
A. Dillard, I think is one hundred twenty miles from Atlanta on a branch road off the Southern Railroad from Cornelia.
Q. That is southeast?
A. No, sir; northeast, on the road between Atlanta and Washington, it is seventy-six miles from Atlanta, then forty-two miles on a branch railroad on the Tullula Falls Railroad.
Q. What do you understand, Mr. Grist, the word "mill" or "milling" when used in the name of a concern

selling flour, to mean as to the character of that concern?

A. I would think it would be a mill grinding wheat into flour.

Q. Do you deem it to your advantage, or do you have any preference which you shall buy from, the mill grinding wheat into flour or from concerns that buy flour from one who has ground it and mixes it up and sells it?

A. I do not know. A man in the retail business will buy the flour he can get the trade to take the most of.

Q. Which do you prefer to buy?

A. I sell flour from mills, I have bought flour, I did not know at the time, and I do not know for sure yet, I have bought flour from mill owners which were some of these that have been named today. I did not know at the time but I have handled flour from Nashville and other places.

Q. You thought all the concerns you bought flour from ground their wheat into flour, is that correct?

A. That was the impression I had.

Q. That was the impression you had?

A. Yes.

Q. Now, what concerns have you bought from in Nashville?

A. I have bought flour from J. H. Wilkes & Company in Nashville, and one I have not bought from recently, The Mero Mill, and then I buy flour from the Mountain City Mills, Chattanooga.

Q. The Mountain City Mills, Chattanooga?

A. Yes, sir.

Q. Do you know whether or not they grind the flour they sell?

A. They grind the flour.

Q. Grind wheat into flour?

A. Yes, they run a general milling business.

Q. Have you found that the flour from the mills gives you any better satisfaction than the flour you get from concerns you now know to be blenders?

A. Well, I don't know, except just by telling it. I could not say whether there was very much difference.

Q. You do not know any, it was never brought to your attention?

A. I have never had any returns.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. The flour you bought from J. H. Wilkes & Company was satisfactory to you and your customers?

A. I think it was, so far as I know.

Q. And you bought on price, quality and service, of course that is what you bought on?

A. Yes.

Mr. Malone: That is all.

J. B. WARNER, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Warner?

A. Russellville, Alabama.

Q. What is your business?

A. General Merchandise.

Q. Retailing or wholesale?

A. Retail.

Q. How long have you been in that business?

A. Nearly sixteen years.

Q. Do you conduct your business under your own name, J. B. Warner, or under the name of a concern?

A. In my own name.

Q. You handle flour?

A. Yes.

Q. Plain and self-rising?

A. Both.

Q. What does the use of the word "mill" or "milling" in the name of a concern selling flour mean to you, or indicate to you, as to the character of that concern?

A. Well, I think it would mean a mill that ground wheat.

Q. Ground wheat into flour?

A. Ground wheat into flour.

Q. Do you deem it to your advantage, or do you prefer to buy from a concern that actually grinds wheat into flour?

A. Well, I don't know that I do. I buy from both parties.

Q. Do you have any preference in the matter?

A. I do in the highest grade flour.

Q. Yes. Which do you prefer to buy that from?

A. The millers.

Q. That is the one that grinds it?

A. I mean the one that grinds it.

Q. Why?

A. Because they put out a higher grade flour.

Q. You prefer to buy from the ones that grinds the higher grade flour because they put out a higher grade of flour?

A. I think so, that is the way I understand it.

Q. Do you buy from any concerns in Nashville?

A. I have bought from the Wautauga Milling Company, and F. J. McCarthy Company, I believe, or J. F.

Q. F. J. McCarthy Milling Company?

A. Yes.

Q. Is the Wautauga Milling Company a blender or do they grind the wheat into flour?

A. I understand they are blenders, but when I began buying I did not know what they were. I supposed they were millers.

Q. When did you get the understanding that they were blenders?

A. I have just heard it off and on for a year or so.

Q. Since you received the questionnaire from the Federal Trade Commission?

A. Before that.

Q. Now, the F. J. McCarthy Milling Company what kind of concern is that? Does it grind wheat into flour or does it blend?

A. Well, I understand they blend.

Q. When did you learn that?

A. Well, I have known that for a year or so. Two or three years. I got that through other flour men.

Mr. Bane: That is all.

Cross-examination by Mr. Malone.

Q. You got that through the salesmen for the flour mills?

A. Yes, sir.

Q. They would come around and tell you, why yes so and so was a blender?

A. Yes, sir.

Examiner Sheppard: When you heard a salesman say that did it make any difference to you one way or the other?

A. No, sir; I would tell them this flour is giving my trade satisfaction. Where I can get the flour to suit my trade it don't make any difference to me whether it is blended or ground.

Examiner Sheppard: Just so the flour is all right.

J. B. Warner J. E. Franklin

A. Just so the flour is all right.

Examiner Sheppard: You said something in Mr. Bane's examination, that was rather interesting to me. I want you to tell me about it from your own experience. You said something about buying high grade flour from millers. I want you to tell me, do or do not blenders sell flour as high in price as millers?

A. I have never bought any as high price as I have from millers.

Examiner Sheppard: So it is your experience that the miller—

A. That the millers' have a higher grade flour, or they would not charge more for it, and then I use it myself.

Examiner Sheppard: All right, that answers my question.

Q. You say you paid a higher price and naturally felt you were getting a better article because you paid a higher price?

A. Well, I did get a better article; in fact I have tried it out and it suited me better and I used it myself.

Q. You would know if the blender puts up the same quality of flour at the same price, there is no choice between them?

A. I don't think it would be any better, no sir. I buy flour from mills that grind at the same price I buy from these other mills, but it would not give my trade the satisfaction that this other does.

Q. You say the flour would not give satisfaction?

A. At the same price it would not give satisfaction to my trade, from the mills, as the flour I have been buying from the mixers.

Mr. Malone: That is all.

Mr. Bane: You are excused.

Witness excused.

J. E. FRANKLIN, being produced, sworn and examined on behalf of the Commission, testified:

J. E. Franklin

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Franklin?

A. I live at Wetumpka, Alabama, Wetumpka, Elmore County.

Q. What is your business, Mr. Franklin?

A. I am in the grocery business.

Q. Wholesale or retail?

A. I do a little of both, mostly retail, but do a small wholesale business.

Q. Through what section or territory do you sell wholesale?

A. I don't sell outside of my own County.

Q. Do you conduct that business under your own name, or some other name?

A. No, my own name.

Q. Just J. E. Franklin?

A. Yes, sir.

Q. Do you handle flour?

A. Yes, sir.

Q. Plain and self-rising?

A. Yes, sir.

Q. What does the word "mill" or "milling" when used in the name of a concern selling flour, mean or indicate as to the character of that concern?

A. Well, of course if I had not already had the experience, take me off-handed I would consider that that meant a grinder.

Q. That is one who—

A. Grinds wheat into flour.

Q. But, in your experience in the buying business, you have learned there are some concerns that use those words who did not grind the wheat?

A. Yes, I have found that is used generally by the blending plants as well as the people that grind.

Q. Do you buy, or is there any grade or character of flour you handle that you buy exclusively from those you know to be actual millers?

A. Yes, sir.

Q. What grade is that?

A. Well, that is my highest grade of flour.

Q. What kind or character of flour is it, if you know, if it has any trade name or of any particular kind or character?

A. I buy the very highest flour.

Q. What is it called, straight flour, patent, plain patent, fancy patent or short patent?

A. Short patent.

Q. Called short patent?

A. Yes.

Q. Why do you buy that grade of flour from the mills?

A. Because the blenders do not put out that highest grade of flour. My most exacting trade demands it, not because they cannot put it out, but they do not do it.

Q. You do not know whether they can or not?

A. I know it in this way, I, a few years ago made a trip around through the wheat places and visited several mills and saw both plain plants and I mean, blending plants and grinders, and was informed by a good many grinders when they get long on any grade of flour, for instance, if a low grade was moving rapidly and the high grade wasn't, rather than cheapen their brands of flour, that they sell that high grade flour to the blender. If the blender would turn around and resell that flour to me, there is no reason why I could not get just as high grade flour from the blender as I get from the grinder. But, I am informed, I do not know this of my own personal knowledge, I am informed that they take the lower grade flour and mix with the higher grade, and therefore make what is termed a standard grade.

Mr. Malone: We object to what he is informed.

A. I could not say that I know that directly, but I will answer it in this way.

Examiner Sheppard: Strike out about what he was informed. I do not want information of that kind. I want facts.

A. I will try to give them to you, Judge. I have not been able to buy high grade flour from the blenders that suited my trade, my most exacting trade.

Q. You say some mills told you, you made a tour of the mills?

A. Several.

Q. They told you about selling flour to blenders?

A. Yes.

Q. What mills?

A. The Columbia Mill & Elevator Company was one, the City Mill & Grain Company of Columbia, Tennessee, was another.

Q. And the other was what?

A. The Columbia Mill & Elevator Company.

Q. Where is that?

A. At Columbia, Tennessee.

Q. Any other?

A. No, sir.

Q. Only those two told you about it?

A. Yes.

Q. Do each of those concerns that you have named, grind the wheat into flour?

A. They both did. I don't think the City Mill & Grain Company is operating at all at the present.

Q. At the time you visited them, were they grinding?

A. Yes, sir.

Q. Do you know whether or not they blended or mixed flour also?

A. They made self-rising flour, of course they had to mix it.

Q. Outside of the self-rising?

A. No, sir.

Q. The Columbia Mill & Elevator Company, does it grind wheat into flour?

A. They do.

Q. Are they still in existence?

A. Yes.

Q. Can you tell me, if you know, what size mills those are, large, small or medium mills, if you know?

A. I guess they would be termed medium mills.

Q. About what capacity per day, if you know?

A. About three or four hundred barrels.

Q. Which flour do you prefer to buy, Mr. Franklin, the flour that comes direct from the mill that grinds it or from the blender?

A. I prefer to use the flour that comes from the fellow that I can buy it cheapest from, that will satisfy the trade.

Q. I am talking about you personally, in your own personal use, which do you prefer?

A. If I was buying for my own table I would buy from the grinder because I would get a higher grade flour, but buying for the trade I get it from the blender because I get it for less money and it is satisfactory.

Q. For your own use, you would buy flour from the mill?

A. Yes.

Q. For your own use, you would buy from the mill?

A. Yes, for the reasons I have already stated.

Examiner Sheppard: You do not buy flour from the mill?

A. Yes, sir.
Q. Does not all flour come from a mill?
A. Yes, sir.
Q. I mean coming direct from the mill, not passing through the hands of a blender?
A. That is the way I considered your question.

Mr. Bane: That is all, Mr. Examiner.
Examiner Sheppard: Cross-examine.

Cross-examination by Mr. Malone.

Q. Did you know when you visited the Columbia Mill & Elevator Company that it bought flour from other mills?
A. No, sir; I did not.
Q. And put it out under its own name?
A. No, sir; I did not.

Mr. Malone: That is all.

S. W. BURGE, being produced, sworn and examined on the behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Burge?
A. Pulaski.
Q. Pulaski, Tennessee?
A. Yes, sir.
Q. What is your business?
A. Grocery, retail grocery.
Q. Is that retail grocery business conducted under your own name, or do you have some other name?
A. No, my own name.
Q. As S. W. Burge?
A. Yes.
Q. How long have you been in that business?
A. Twenty years.
Q. Do you handle flour?
A. Yes, sir.
Q. Plain and self-rising?
A. Plain only.
Q. Plain only, no self-rising?

A. No, sir.

Q. What does the word "mill" or the word "milling," when used in the name of a concern selling flour, indicate or mean as to the character of that concern, Mr. Burge?

A. Well—

Mr. Malone: That question is asked in a general way, and has been of a number of witnesses. I think he should ask the witness what it means to him.

Examiner Sheppard: I understand that is what he means, of course.

A. It means men grinding wheat.

Q. It means a mill grinding wheat into flour?

A. Yes, sir.

Q. What do you understand the phrase "Manufacturer of Flour" to mean?

A. A man that is manufacturing wheat into flour.

Q. Do you have any preference, or do you consider it to your advantage to buy from a mill that grinds wheat into flour?

A. I buy from the man that sells the cheapest, I buy from both.

Q. From both?

A. Yes, sir.

Q. That is, when you say both, you mean men who grind wheat into flour as well as men who buy flour already ground and mix it?

A. Yes.

Q. Which concern, which do you have any preference in the matter, do you prefer to buy from?

A. At the same price I would buy from the miller.

Q. Why?

A. I think he would be entitled to it.

Q. Any further reason?

A. He makes a better flour.

Q. You said you bought flour from some mixers or blenders. What mixer or blender do you buy from?

A. I buy from the Southern Milling Company in Nashville.

Q. Is it the Southern Flour Mills Company or the Southern Milling Company?

A. Southern Milling Company, I think.

Q. The Southern Milling Company?

A. Yes, I think so.

Q. Is that a blender or miller, that is, does he grind or does he blend flour?

A. I think it is a blender. I have never been to his mill.

Q. Sir?

A. I have never been to his place.

Q. Do you know whether or not the Southern Milling Company has any plant at all?

A. No, sir; I do not.

Q. When did you learn that that was a blender?

A. Over a year ago.

Q. How long have you been buying from them?

A. Along about two years, occasionally, most of the time for about two years.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: You spoke of the best flour, did you want me to understand you as meaning that the best flour is the highest price?

A. Usually.

Examiner Sheppard: Yes, the more you pay for it the better it is?

A. Supposed to be better, and it usually is better.

Examiner Sheppard: You get that from the—

A. From the mills.

Q. The higher grade flour usually commands higher prices than a lower grade of flour, does not it?

A. Yes.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. Who have you been buying flour from?

A. I have bought part from mills and part from jobbers.

Q. What mills?

A. Lynnville Roller Mills, a little home mill down there close to Pulaski.

Q. And who else?

A. I buy from Inglehardt, through a jobber.

Q. All right, who else?

A. I am buying flour now from—I don't know whether it is a mill or a mixer.

Q. Who is it?

S. W. Burge W. C. Saunders

A. The Waverly Flour Mills.
Q. The Waverly Flour Mills?
A. Yes.
Q. Where is that located?
A. I get the flour from Nashville.
Q. You do not know whether that is a mixer or a grinder?
A. No, sir.
Q. Now, you were asked something about manufacturing, does not that mean taking different materials and turning out a finished product, is that what you understand by it?
A. Usually, yes.

Mr. Malone: That is all.

Witness Excused.

W. C. SAUNDERS, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Saunders?
A. Wallerboro, South Carolina.
Q. What is your business.
A. Farming.
Q. Farming?
A. Yes.
Q. Do you carry on any mercantile business?
A. I run a commissary.
Q. Where?
A. At Stokes, South Carolina.
Q. Stokes, South Carolina. Do you handle flour?
A. Yes, sir.
Q. Plain and self-rising?
A. Only self-rising.
Q. How long have you been running that business?
A. Well, about fifteen years.
Q. What does the use of the word "mill" or "milling" in the name of a concern selling flour indicate or mean as to the character of the concern?
A. Well, I would like to say that we have no flour mills in our section of the country, and I think everyone almost are like myself, they think of a flour mill as one who grinds the wheat into flour.

Q. That was your understanding of it?

A. Yes.

Q. Is that still your understanding of it?

A. Well, of course, I would say so, yes.

Q. What does the term "Manufacturer of Flour" mean?

A. Well, I would say grinding wheat.

Q. One that makes flour from wheat?

A. Yes, sir.

Q. Which do you prefer to buy from, Mr. Saunders, a concern grinding wheat into flour or a concern that buys flour from someone else and mixes that flour and then sells it?

A. Well, I will confess to you I did not know there was anything like a blender of flour. I don't know very much about it.

Q. You did not know it until when?

A. Until this morning.

Q. Then you heard it, as a result of the testimony you heard here in the room?

A. Yes.

Q. Do you think it is to your advantage to buy directly from the mill that grinds the wheat?

A. Well, the impressions I have had this morning—

Q. By the impressions that you got out of the hearing, what did you think before you came into this room this morning and heard the testimony, did you think it was to your advantage to buy directly from the mills that grind the wheat?

A. In fact I did not know there was any mill in connection with flour except those who grind wheat.

Q. I am asking if you, before you came into this room this morning, did you consider it to your advantage to buy directly from a concern that ground wheat into flour, or from a concern that bought the flour and mixed it and then sold it?

A. Yes, sir.

Mr. Malone: Mr. Examiner, he has said he did not know there was any other way.

Mr. Bane: He could buy from a wholesaler, that is another way.

Examiner Sheppard: There are quite a number of ways. You understood it, and had knowledge enough to answer it, did you?

A. Yes, sir.

W. C. Saunders

Q. Why did you think it was to your advantage to buy directly from a concern grinding wheat into flour?

A. Well, it is natural that they would want to put out a good brand of flour and make a good flour.

Q. Did you or not have any idea that in buying directly from the mill that ground the wheat into flour you were buying it cheaper than if you had bought it through a wholesaler, or after the flour has passed through some other hands?

A. Yes, sir.

Q. You thought that was another advantage in buying directly from the mill?

A. Yes, sir.

Q. Have you bought flour from the Wautauga Milling Company?

A. Yes, sir.

Q. What kind of concern did you think that was?

A. I thought they were manufacturers of flour, ground the wheat.

Q. That is, themselves grind the wheat into flour?

A. Yes, sir.

Q. Do you still think so?

A. Well, I would not think so.

Q. Why?

A. From the testimony I heard this morning.

Q. Until that testimony you did think so?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Cross-examine him.

Cross-examination by Mr. Malone.

Q. Who have you been buying from Mr. Saunders?

A. Well, I have bought from the Wautauga Milling Company, bought some from the wholesalers down in my section of the country.

Q. Do you know who the wholesalers bought from?

A. No, sir.

Q. So it was through the wholesalers and Wautauga Milling Company, they are the only ones?

A. Well, recently I have bought some from the Richland Milling Company.

Q. Where is that situated?

A. By the way, I don't believe I can tell you.

Q. I understand you did not know there was any such thing as a blender or manufacturer of self-rising flour, who did not grind his own flour? I understand you did not know that until today?

A. I did not know that, no, sir.
Q. Until you heard the testimony today?
A. Yes, sir.
Q. Did the flour you bought give satisfaction to your trade?
A. Well for a good while I heard no complaints, but finally the flour I bought from the Wautauga Milling Company did not give thorough satisfaction. Now, some times the shipments might have been all right, but others, there was some complaint about them.
Q. You do not know any other concerns that you bought from than those you have already mentioned?
A. Well, I could not name any others, right now.
Q. What is the extent of your business, Mr. Saunders?
A. Why, very small business, just buying small local shipments.
Q. To whom do you sell?
A. I sell to my laborers on the farm, principally.
Q. Colored people on the farm?
A. Some colored folks, some white folks.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. Do you sell to others than the laborers on your farm?
A. Very little.
Q. You do some, you say?
A. I have just a little, but a very little.

Mr. Bane: That is all, Mr. Examiner.

Recross-examination by Mr. Malone.

Q. How long did you handle flour from the Wautauga Milling Company? Seven or eight years?
A. Yes, fully that long I would say.
Q. And most of the time it did give satisfaction to your trade?
A. Yes, I would say that all right.

Mr. Malone: That is all.
Mr. Bane: That is all.

Witness excused.

S. W. BURGE, being recalled, upon further examination testified:

Redirect Examination by Mr. Bane.

RD 1. You have been here in the room this morning and up until now, about three o'clock, and heard the testimony this morning?

A. Yes, sir.

Mr. Bane: That is all.

Examiner Sheppard: Any cross?

Cross-examination by Mr. Malone.

Q. Well, Mr. Burge, the other witnesses that have testified have been here listening too, have not they?

A. Yes, I suppose so.

Mr. Bane: I think they have. I did not object.

A. There has not been any rule.

Mr. Bane: Were you here yesterday?

A. No, sir; I came this morning.

Mr. Bane: All right.

Examiner Sheppard: Next?

Mr. Bane: I have two other witnesses subpoenaed for today but from one I had a letter saying he was sick and unable to get here. The other one I have not been able to locate, and that completes my witnesses for today.

Examiner Sheppard: Have you got subpoenas out for tomorrow?

Mr. Bane: Yes, sir.

Mr. Malone: To accommodate some of my witnesses that will be in town only for today, I would be glad to put them on out of order, if there is no objection.

Mr. Bane: I have no objection.

Examiner Sheppard: You mean on your side of the case?

Mr. Malone: Yes, sir.

Examiner Sheppard: All right.

CARL W. SIMS, being produced, sworn and examined on behalf of the Respondent, testified:

Carl W. Sims

Direct Examination by Mr. Malone.

Q. What is your occupation, Mr. Sims?
A. I am president of a concern that operates a flour mill?
Q. Where do you live?
A. Frankfort, Indiana.
Q. And your plant is situated there?
A. Yes, sir.
Q. What is the name of your mill or plant?
A. Sims Milling Company.
Q. Give us an idea of the extent of your business?
A. Make that a little more definite.
Q. Well, I mean to say whether you have a large mill, a small or medium sized mill?
A. Oh, I would say a medium sized mill.
Q. What is its capacity?
A. Three hundred fifty barrel.
Q. You operate what is known as a wheat grinding mill?
A. Yes, sir.
Q. How long have you been in that business?
A. Twenty-five years.
Q. Do you think you are reasonably experienced in that business?
A. I question whether any miller is ever reasonably experienced in this business.
Q. You have had about a quarter of a century though, and fixed it up, haven't you?
A. Oh, yes.
Q. Have you sold any flour to grinding mills in the south and southeastern territory?
A. Yes.
Q. Has that been on one occasion or more than one occasion?
A. Oh, on more than one occasion.

Mr. Bane: Mr. Examiner, I object to this line of examination. The fact the flour mills may or may not buy flour is in no way that I can see pertinent under this complaint. The charges are against Mr. McCarthy selling flour under a name that implies he operates a mill when he does not, or when he does not grind the flour he sells. The fact that someone else may do the thing is no justification for him nor is it any defense to an action, by Mr. McCarthy for the use of the words by Mr. McCarthy, if they are a deception to the purchaser.

Mr. Malone: Mr. Examiner, you will recall this morning counsel examined his own witnesses on that point and this is strictly responsive to that, affirmatively introduced by counsel in this investigation.

Mr. Bane: Mr. Examiner, the testimony with reference to the purchasing of flour by flour mills was admitted by you on yesterday, as a general statement by Mr. McCarthy on his cross-examination, over my objection. I came in this morning and produced a miller and asked him the general statement, when and under what conditions, under what circumstances did mills buy flour, directly in response to the testimony set out by counsel for respondent on yesterday. The examination this morning as to quantities, etc., was brought out by Mr. Malone and not by me.

Mr. Malone: No, but the counsel brought it out by direct examination of his own witness, and I submit it is strictly responsive.

Examiner Sheppard: Go ahead. I will let it go in.

Q. Is that a regular practice for flour mills?

A. I would think it is frequently done.

Q. Now, do you know what the grinding mills to whom you have sold flour, do with it?

A. I have no positive knowledge.

Q. Have you ever packed any in the bags of the mill to which you sold?

A. Yes.

Mr. Bane: I object to all this line as irrelevant, incompetent and immaterial.

Examiner Sheppard: Yes, the objection is in. I will let the respondent go through with it.

Q. Mr. Sims, do you consider it an advantage to operate your mill on a twenty-four hour shift?

A. Certainly.

Q. For what reasons, explain that?

A. Because operating at full capacity which is a twenty-four hour shift produces the per unit cost to manufacture.

Q. What about the quality of flour?

A. There is probably some improvement in a continuous operation over an intermittent operation.

Q. It makes a better product if you do not shut down and have to start up on a cold mill, in other words?

A. I would say that is generally true, yes.

Q. Operating on that sort of basis, are there times when you have a surplus of flour?

A. Yes, sir.

Q. Do you sell any of that to the blenders?

A. Quite a large amount of it.

Q. Is that just the refuse of your mill or good flour?

A. The best I can make.

Q. At what sort of price do you sell that?

A. I get as much for it as I can.

Q. Well, as compared with your other sales, is it at or about cost?

A. I could answer that yes, at or about cost.

Q. Mr. Sims, we have had the word "Patent" flour introduced here in several connections. I will ask you what you understand by "Patent Flour" or if anybody understands what patent flour is? Just give us your ideas about that?

A. Well, to attempt to tell what patent flour is would require quite a speech I am afraid, because it goes back a great many years in the milling business. However, there are several broad acceptances of the term, which have a more or less definite meaning, and to give you that, I think would be to say, that a patent flour is that part of the stream of the flour which is left after taking off a greater or less percent of the inferior flour, low grade flour.

Q. And that percent varies with each miller?

A. That is the miller's own secret.

Q. So, there is no standard?

A. I would say not.

Q. Are you familiar with the manufacture of self rising flour?

A. Yes.

Q. Have you a self rising flour outfit in connection with your plant?

A. Yes.

Q. Well, how do you make it?

A. It is made in our case in a batch mixer, by introducing a stated amount of flour and adding thereto a stated amount of phosphate, soda and salt, mixing the ingredients thoroughly and re-bolting it.

Mr. Malone: That is all, Mr. Examiner.

Examiner Sheppard: Cross-examine him.

Carl W. Sims

Cross-examination by Mr. Bane.

Q. What proportion of your flour produced at your mill do you sell to blenders?

A. I would have to guess at that, but I would say about forty percent.

Q. Would that be the average?

A. Yes, roughly.

Q. That would be over the average period of the last two or three years?

A. Yes, two years.

Q. It would not run fifty percent?

A. Of course, I cannot state accurately.

Q. Don't you sell approximately half of your output to blenders?

A. Forty percent is nearly half.

Q. Don't you sell approximately sixty percent?

A. I think not.

Q. You would sell approximately half?

A. We would sell approximately half.

Q. That is a nice business, isn't it?

A. I like it very well.

Q. Not much selling cost in connection with it?

A. Very little.

Q. Very little over head expense in getting rid of it?

A. Very little.

Q. You have less expense in connection with the sale of that flour than you do the flour that you sell under your own brand to either the wholesaler or retailer?

A. Yes, sir.

Q. Much smaller expense, don't you?

A. Yes.

Q. How does the price you get for that flour compare with the cost of the wheat, plus the conversion charge in your mill?

A. May I ask, do you mean do we sell at cost?

Q. I have asked the question, what I want is the cost?

A. Let us have it.

Examiner Sheppard: Just repeat the question.

Q. I mean by conversion charge, the cost of making the wheat you buy into flour, you sell to the blender?

A. Is our selling price equivalent to the conversion charge?

Q. I asked how it compared, is it equal to, less than or more than?

A. I would say it is more than.
Q. You sell at a profit?
A. At a profit.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

Q. Is it much of a profit?
A. Not very much.

Recross-examination by Mr. Bane.

Q. The profit varies, does not it, sometimes you can get a bigger profit than at other times, is that true?
A. Yes.

Mr. Bane: That is all.

Redirect Examination by Mr. Malone.

Q. Is it a fact a number of mills in Indiana this year have equipped their mills with these blending plants?

Mr. Bane: If he knows.

A. You mean with equipment to make self rising flour?
Q. Exactly?
A. I do not know any that have put them in this year.
Q. Have they been put in recently, if you know?
A. Not to my knowledge, in our state.

Mr. Malone: That is all.

Recross-examination by Mr. Bane.

Q. Just to clear up the record, Mr. Examiner, there are mills grinding wheat into flour in your State other than those that do make self rising flour?
A. Oh, yes.
Q. And what you mean to testify is that they have not added equipment for making it in the last two years?
A. So far as my knowledge goes.

Mr. Bane: That is all.

Witness Excused.

W. L. Sparks

W. L. SPARKS, being produced, sworn and examined on behalf of Respondent, testified:

Direct Examination by Mr. Malone.

Q. Mr. Sparks, what is your residence, please?
A. I live at Terre Haute, Indiana.
Q. What is your business?
A. Milling, flour milling.
Q. With what flour mill are you connected?
A. I am an official of the Sparks Milling Company.
Q. Are you President of it?
A. I am Vice-President.
Q. Mr. Sparks, without betraying any trade secrets, what has been your experience in milling, how long, have you been in that line of business for many years?
A. Forty years.
Q. Does your mill buy flour from other grinding mills, and sell the flour to other grinding mills?

Mr. Bane: That is objected to, Mr. Examiner, as irrelevant, incomepetent and immaterial.

Examiner Sheppard: I presume Mr. Malone has a purpose in this. I do not want in any way to cripple his case.

Mr. Bane: It is apparently to justify the actions of Mr. McCarthy, because others did.

Examiner Sheppard: I will let him answer.

Q. Will you please answer, sir?
A. We do both, on occasions.
Q. Have you bought from and sold other mills in the past year?
A. Yes, sir.
Q. I mean by mills, of course, you understand, grinding mills. I do not know whether I asked you, if I did not, I will ask you now, your plant of course, is a wheat grinding mill?
A. It is.
Q. Mr. Sparks, is it to your advantage, in your opinion, to operate on a twenty-four hour shift?
A. Subject to a good many contingencies and other things, it is.
Q. Why, what would be your reason for that?
A. If you can dispose of your product without reducing the returns per unit, then operating more continuously on a twenty-four hour shift gives you a lower unit of cost.

Q. Then do you sometimes on that basis, have a surplus of flour that you cannot or do not want to put out under your own brand?

A. We may have such surplus regardless of our hours of operation.

Q. In that case, do you find it to your advantage to sell that surplus at a very low price, at or near cost, to others?

A. We always sell what we sell for the best price we can get for it.

Q. Do you sell any of your output to blenders?

A. Yes, sir.

Q. What sort of flour is that you sell?

A. Depending upon what they buy.

Q. Do any of them buy your best flour?

A. Yes.

Q. What sort of price do you make to blenders on this surplus flour, as compared with the flour that you put out under your own brands; is it lower or higher?

A. Lower.

Q. Considerably lower is it not?

A. I would not care to speculate as to whether it is considerable. It is lower, might I amplify that some?

Examiner Sheppard: Yes.

A. We also sell to other buyers on quite as low a basis as we do sell to the blenders, some other buyers.

Q. What class of buyers is that, Mr. Sparks?

A. Well, a class of buyers that give you substantially the same operating commission.

Q. Are they the wholesalers, cracker manufacturers, or who is it?

A. They may be cracker manufacturers, maybe bakers.

Q. And not wholesalers?

A. I will say definitely we sell chain stores, and not wholesalers on that basis.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

Q. What proportion of your output of your mill do you sell to blenders, Mr. Sparks?

A. I could only approximate.

Q. Would that be a fair approximation, or the merest kind of a guess?

A. I can come pretty close.
Q. All right, give it to us?
A. About twelve to fifteen per cent.
Q. That is a very good business, is not it?
A. What is that?
Q. That is a very good business, is not it, I mean from your standpoint?
A. Yes.
Q. There is little cost in connection with the sale of it?
A. Yes, we believe that all flour business is bad.
Q. This would come under bad, the other is worse and worst, is that it?
A. Yes, sir.
Q. There is not as much cost in connection with the sale of that flour to the blenders as there is to the other flour?
A. That is right.
Q. You could afford to sell it at a lower price, could you not?
A. Yes.

Mr. Bane: You are excused.

Redirect Examination by Mr. Malone.

Q. What advantage do you consider the so-called Nashville blenders have in selling to the south and southeastern territory?
A. Proximity to the trade.
Q. Do you consider that a great advantage to them?
A. I consider that a great advantage to them, yes.

Mr. Malone: That is all.

Witness excused.

JOHN A. REIS, being produced, sworn and examined on behalf of Respondent, testified:

Direct Examination by Mr. Malone.

Q. This is Mr. John A. Reis?
A. Yes.
Q. What is your residence, Mr. Reis?
A. Indianapolis.
Q. And your occupation?
A. Miller.

John A. Reis

Q. With what mill are you connected?
A. Acme-Evans Company.
Q. What is your position?
A. Secretary.
Q. How long have you been connected with that Company?
A. About twenty-one years.
Q. Is that a grinding mill?
A. It is.
Q. What is its size, capacity?
A. Three thousand, a little better than three thousand barrels per day.
Q. Have you a self-rising flour equipment in connection with your mill?
A. Yes, sir.
Q. Is that a regular mixer?
A. A batch mixer.
Q. Do you consider it an advantage to your mill to run twenty-four hours shifts?
A. Under certain circumstances, yes.
Q. And what is the advantage of it?
A. Oh, naturally your cost would be lower, if you sell on the right kind of basis you would increase your profit.

Mr. Bane: Cost per unit, you mean?

A. Yes.
Q. And keeping a continuous operation, keeping your mill hot, how does that affect your flour?
A. Under modern methods I do not think that is true. The way our mill is controlled, we control the humidity and temperature in our mill all the time.
Q. I mean could you start up with your mill cold and get the same effect?
A. Yes.
Q. Do you have a surplus of flour at times?
A. I do not know whether you would consider it a surplus, we have flour to sell at all times.
Q. Do you have flour you do not want to put out under your own brands, that you do not put out under your own brands?
A. Oh, surely, you mean bulk flour?
Q. That is what I mean?
A. Yes. Yes.
Q. Do you ever sell any of that to other grinding mills?
A. Yes, sir.

Mr. Bane: I object to that the same as to the other.

Examiner Sheppard: The same ruling.

Q. Do you sell any of your surplus flour to blenders, so-called blenders?

A. I would not call it surplus flour, we sell flour to them, though.

Q. What sort of price do you make them?

A. We make them a price in keeping with the cost of doing that character of business.

Q. Is that low, very low, as compared with others?

A. It depends upon the class we do business with, the export people, people who buy in similar packages, give specifications with the orders, they would be in the same class.

Q. The point I have in mind is this, it seems to be the idea of the Commission, as alleged in the complaint here that the so-called blender has to buy his flour just like anybody else, at the same price anybody else pays for it, and that he then has to add another profit to that in selling it to his trade? Now, that is the idea I want you to direct your attention to.

Mr. Bane: Just a moment. There is no such thing as that alleged in the complaint, nor is there anything in the complaint on the blenders business here, it is not with reference to the price. The nearest thing alleged in the complaint is the fact that the use of the word "mill" or "milling" in a trade name, selling under that trade name, to a great many people, the people are lead to believe they are buying directly from the concern that buys wheat and grinds it, and thus save the middleman's profit.

Examiner Sheppard: That is my idea. I do not know whether you have misunderstood that or not. I have been allowing you to put this testimony in trying to get your viewpoint.

Mr. Malone: I am on this point, Mr. Examiner, that one way to show that people do not think that the blender, so-called blender is cutting out a middleman's profit, one way to show, is to show that he buys so cheaply that he can sell to his trade without any added profit in there. In other words, the implication is, you say, you are cutting out a middleman's profit but you are not cutting it, that is the point that is desired, as I consider it.

Mr. Bane: I do not see, Mr. Examiner, that that is relevant even if it were true. The question is, whether the use of the term misleads the men, and as a result of that misleading he gets business he would not get. I am not trying the question of whether or not it is a fact, we are trying the implication.

Examiner Sheppard: I do not see how I can make a finding on that, but you may argue that to the Commission.

Mr. Malone: I wish to get my facts in the record to make that argument.

Examiner Sheppard: I will let you do it, too. Read the question.

(Question was thereupon read.)

Q. And I will go further with it, for instance, you used to sell to the Ford Flour Company when Mr. McCarthy was with it?

A. Yes, sir.

Q. Have not you sold them large quantities of flour practically at cost?

A. Well, you say practically at cost, practically covers a lot of territory.

Q. I know, but we cannot state just exactly?

A. You might say at about cost if you want to put it that way.

Q. Well, that is satisfactory?

A. Well—

Q. You have sold to other blenders in the same way?

A. Yes, sir.

Q. Mr. Reis, I will ask you this question: You have a self-rising equipment and you are experienced in the manufacture of self-rising flour?

A. Yes, sir.

Q. I want to ask you from your experience and observation when you put in these ingredients and run them through that machinery, whether a product comes out, a new and different product comes out, different from any ingredient that you put in there?

A. Most assuredly.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

Q. But, that new product comes out of there, is nothing more than a compound of the product that you

put in, is it? It is a compound of the flour you put in and of the self-rising ingredients?

A. Yes, the same as you take different ingredients to manufacture baking powder.

Q. You mix them up?

A. Surely.

Q. Nothing more or less than a compound of the products you put in that mixture?

A. It is manufacturing self-rising flour out of various ingredients.

Q. Will you answer my question: It is nothing more than the compound of those products you put into the mixer, is that what it is?

A. Certainly.

Q. That is exactly what it is?

A. Yes, sir.

Q. The flour you can sell to the blenders, is a very nice business, isn't it?

A. I would not sell if I didn't think so.

Q. Little cost in connection with the sale of flour to blenders?

A. Yes.

Q. Do you make a profit on the flour you sell to blenders?

A. I believe we do.

Q. Do you understand the blenders sell their product at cost or without profit?

A. I should not think they would.

Mr. Bane: That is all.

Redirect Examination by Mr. Malone.

Q. That lamp is nothing more than a compound of the things that went into the mill that made it, is it? If you were to look at it that way?

A. I should imagine by a series of processes, etc., it was made from the metal that went into it.

Q. And any article, if you want to call it a compound of the things you start out with, is that right?

A. Oh, yes.

Mr. Malone: That is all.

LLOYD COWGILL, being produced, sworn and examined on behalf of Respondent, testified:

Lloyd Cowgill

Direct Examination by Mr. Malone.

Q. Mr. Cowgill, what is your residence?
A. Carthage, Missouri.
Q. What is your business?
A. My business is in Joplin, Missouri. I live in Carthage, but my business is in Joplin.
Q. What is the nature of your business?
A. Milling business, flour milling.
Q. What is the capacity of your plant?
A. One thousand barrels per day.
Q. It is a grinding mill?
A. We manufacture flour.
Q. What sort of wheat do you manufacture from, hard or soft?
A. Soft wheat milling.
Q. Do you sell any of your soft wheat to other millers, I mean grinding mills?
A. Yes.

Mr. Bane: Objected to as irrelevant and incompetent and immaterial.

Mr. Malone: It is the same thing.

Examiner Sheppard: Yes, you have the same objection to this line of testimony, it is generally understood.

Q. Do you do much or little of that?
A. A limited amount.
Q. What do these mills, if you know, do with that flour?
A. Well, where we sell the hard wheat miller, where he does not manufacture a soft wheat flour, he puts the flour we manufacture for him under his mill brands and sells to his trade.

Mr. Bane: Do you know that?

A. Yes, sir.
Q. Mr. Cowgill, do you sell any of your flour to blenders?
A. Yes, sir.
Q. What kind of flour is it, is it just the refuse of your mill or good flour?
A. Well, which question do you want answered first?
Q. Well, just tell us what kind of flour?
A. The flour we sell to blenders, I would judge fifty

per cent is the very best flour we can manufacture from soft wheat.

Q. Are you willing to sell that to them at low prices or comparatively low prices?

A. I try to figure the market and cost basis.

Q. Have you a self-rising flour plant?

A. Yes, sir.

Q. What has been your observation of the effect of running flour through this self-rising flour machinery?

A. The self-rising flour plant in our case is also a blending plant, and from my experience of aeriating the flour through a blending system is helpful to the baking qualities of that flour.

Q. Does it change the quality of it?

A. It would tend to improve it.

Q. Is it a more fluffy flour after it comes through there?

A. It is an improved flour. I would not describe just in what method it has been improved, but in my opinion a flour that has gone through a blender and aeriated properly is in better condition for baking than otherwise.

Q. Do some of these other mills that you sell flour to, furnish you their sacks and have you pack it in their sacks?

A. Their sacks, under their mills brands, are furnished to us and packed in their sacks, under their mill labels for distribution to their trades.

Cross-examination by Mr. Bane.

Q. Do you know what they did with that flour?

A. They sell it.

Q. How do you know?

A. I have seen their advertisements in the paper where they have offered soft wheat flour for delivery.

Q. Do you know they sell it, any of it?

A. I have not seen their records.

Q. Yes, I know, do you or do you not know?

A. I know they sell soft wheat flour.

Q. How do you know?

A. Because they bought from me to sell.

Q. Because a man buys does not mean they will sell?

A. As a rule when a man buys he generally sells.

Q. The only way you know they sell, you think they sell, because they buy from you?

A. I know they bought for sale?

Q. How do you know?

A. I have seen their advertisements in the paper where they were advertising in the paper for sale this soft wheat flour, I have been told we were the only soft wheat mill that supplied them with flour.

Q. Do you know they made sales? You know they advertised for sales, and know they bought it from you?

A. Yes.

Q. You know they advertised soft wheat flour for sale?

A. Yes, sir.

Q. Do you know whether or not they sold the flour?

A. I have no record of their having made a sale. I have seen none of their invoices.

Q. Do you blend flours?

A. Yes, sir.

Q. You are a blender?

A. No, sir.

Q. You blend flour as well as being a grinder?

A. I believe there are very few operating millers who do not blend flours.

Q. You do blend flours?

A. Yes, we have a blending plant.

Q. A plant, a blending plant is it the same plant you use to manufacture self-rising flour?

A. Yes.

Q. You blend flour in that machinery, other than those flours to which you add self-rising constituents?

A. Yes, we blend flour and put it out as a blended flour, it will go through the blender, but not necessarily be a self-rising flour.

Q. That is right, you sell that character of flour as well as flour you do not blend?

A. Under certain conditions.

Q. How is that? How do you mean?

A. We have an export trade that we use it in largely.

Q. And a domestic trade?

A. I said largely we sell on exports.

Q. I know you said largely. I am asking if you sell domestically?

A. Occasionally we do.

Q. Is the demand for that blended flour more and more?

A. To go into detail on what we blend, how we blend, would be a matter I do not believe should be asked, because there are methods that are more or less private in our milling business and I would not want to make it public.

Q. I am asking you merely whether you sell a blended flour?

A. Yes, sir.

Q. You stated you did?

A. Yes.

Q. You state you sell in export?

A. Yes, sir.

Q. I am asking if you sell in a domestic way?

A. Yes.

Q. A very small portion?

A. Yes.

Q. The demand for domestic blended flour, labeled and branded, you do so label and brand it?

A. As a blended flour?

Q. Yes?

A. No, sir.

Q. You sell as a bleached flour?

A. No.

Q. Sell as straight flour?

A. I sell as flour we manufacture.

Q. Which is a blended flour?

A. It is a blend we manufacture ourselves, not a bought flour.

Q. It is a blended flour, is it not? I understood you to say it was?

A. I say it goes through the blender, but it is a flour of our own manufacture.

Q. What is it blended, various grades of flour?

A. That is the point I do not care to discuss.

Q. If you will answer my questions we will keep off of that. Do you sell a blended flour, I understood you to say you did?

A. We sell flour that goes through our blender.

Q. And it is not the same one grade of flour, is it? I understood you to say, Mr. Cowgill, that you sell a blended flour?

A. Yes.

Q. Did I understand correctly or not?

A. Yes, we sell flour that goes through the blender.

Q. Which is a blended flour?

A. It is a flour blended of our own manufacture.

Q. It is a blended flour though?

A. Yes.

Q. I understood you to say you sell that blended flour mostly for export?

A. Yes, sir.

Q. You do sell some of it domestically?

A. Yes.

Q. Is the reason you sell only a small portion to domestic trade and a larger portion for export, because there is a small demand for blended flour domestically?

A. No, sir.

Q. Why is it you do that?

A. Do I have to answer that question?

Examiner Sheppard: Not if it will give out any information on your business, expose any trade secrets.

A. I prefer not to answer.

Mr. Bane: Now, I do not see how that question can repose any trade secrets. I am asking why he does not sell to domestic trade.

Examiner Sheppard: We will have to take his viewpoint.

Mr. Bane: In other words, I understand your point is, if the witness thinks,—

Examiner Sheppard: If in his judgment he thinks it is exposing a trade secret I will not require him to answer.

Mr. Bane: I note an exception and a direct appeal on that. I do not see how in any way the answer to a question as to whether the domestic demands for blended flour is large or small, that is the reason he sells most of his in export, could possibly expose any trade secrets, as it is not asking for the method of manufacture or he name of customers, or anything else.

Q. You said fifty per cent of the flour that you,—

A. Approximately fifty per cent.

Q. Approximately fifty per cent what? I had not finished my question.

A. The only time I have used the fifty per cent fractional part for anything was in the amount of high grade flour I sell the blenders.

Q. That is what I was coming to. Let me finish my question. You said fifty per cent of the flour sold to the blenders was exceedingly high grade flour?

A. I said approximately.

Q. What is the other fifty per cent?

A. It might be of various grades made through the mill operations.

Q. That is all other grades and the highest grade?

A. Various other grades, excepting the highest grade of which I have given the percentage, approximately.

Q. Including the lowest grade?

A. I am approximating fifty per cent of the highest, the other fifty per cent would approximate the remaining fifty per cent of the mill.

Q. What is the mill name for the lowest grade of flour you buy and mill, Mr. Cowgill?

A. I really do not know what they would call the low grade, Red Dog.

Q. Well, the lowest grade that you produced in your mill, what do you call it?

A. I call it low grade.

Q. What would you call it, shorts?

A. I call it low grade.

Q. I am asking generally?

A. No, low grade is supposed to be the lowest grade manufactured.

Q. What is shorts?

A. Shorts is a seed product from wheat.

Q. If it has no flour?

A. It should not have, no, sir.

Q. What is off-fall?

A. Off-fall would be the remainder of the wheat after the flour has been extracted.

Q. It is not included in the flour?

A. It should not. Some mills do.

Q. What portion of the flour,—what proportion of the flour you sell to blenders is of your low grade?

A. Is of our low grade?

Q. Yes?

A. Very, very, small.

Q. Cannot you tell us what it is?

A. Possibly one per cent.

Q. Do you get, usually and generally, a profit on the flour you sell to blenders?

A. May I answer that by just explaining to whom we sell, and answer your question in that way? In the case of buyers we have,—

Q. Yes?

A. We have five classes of buyers, domestic buyers are the buyers who buy under our mill brands, he is the man to whom we sell adding a profit to our cost. There are four other classes of buyers to whom we sell, that we figure on the basis of cost, securing a volume of business and through the volume expecting to make our profit. The four buyers are the cracker factories, the cake

bakers, the hard wheat mills buying soft wheat flour, and the blenders. Those are sold as near as we can figure on a cost basis.

Q. At a lower price than you sell to the others?

A. That is sold on cost, and the other presumably on a profit basis.

Q. It costs less to sell those four classes, don't it, as you do not have a sales cost?

A. When I figure cost, I figure in when I add the cost, the sales cost, I add the price of the sales cost, and those additions are added to the mill cost price.

Q. When you are talking of cost, you do figure in your cost, the total sales expense?

A. When I figure the cost, I figure the conversion cost at the mill, then the other are added to that to arrive at a sales price.

Q. When you were referring to the fact you sold four classes at approximately cost, what did you mean by cost there?

A. I figured the cost, the value of the wheat plus the conversion charge or cost, less the feed or off-fall, return, that is based as cost.

Q. And you do not add sales expense at all?

A. When it is sold you add whatever sales expense there may be involved in the transaction.

Q. You do add the sales expense?

A. The sales expense, it is added to the cost price.

Q. Do you add anything to that cost price for overhead expense, to cover depreciation in the mill?

A. That is taken care of in the cost price.

Q. The depreciation is taken care of in the cost price, what you said was conversion cost?

A. Yes, sir.

Q. You take care of your executive force, mill expense?

A. For operating your office.

Q. You have salesmen on the road, don't you, or do you?

A. Yes, we have one salesman only.

Q. Do you have a sales manager?

A. Well,—

Q. You know you have?

A. Well, I suppose I would be called the sales manager.

Q. Is your salary added into the cost?

A. Yes, sir.

Q. Is the salary and expense of the salesman on the road added into that cost, too?

A. No, I think his is entered as sales cost, but that is a different department, because the salesman on the road sells only domestic business. He does not sell any business in the four last classifications.

Q. But his salary and expense of keeping him on the road, is that added or included in what you call the conversion costs?

A. No.

Q. Now, do you add anything after you add those elements together, do you add anything for profit?

A. To which type of business do you refer?

Q. Oh well, I had been very clearly led by you Mr. Cowgill, to believe there was no distinction between the four?

A. Oh, you are referring to the four?

Q. Yes?

A. It is all based on the same cost.

Q. That does not answer my question. After you have gotten the cost, take the value of the wheat, take the conversion cost?

A. Yes.

Q. I have tried to get what you include in that cost. You add those together, do you add anything to that for profit?

A. No.

Q. Am I to understand then in this record that you always, when selling to a cake baker, a cracker maker, or a baker or to some other miller, that you never add anything nor make any effort to get a profit out of those sales?

A. Did I make that statement?

Q. I am asking that, you said you did not add anything?

A. I do not add any. I figure the value of the wheat, and I said I am figuring on a competitive basis, but I take into account the prices other mills are quoting a like trade.

Q. You first figure the cost as I understand now, then you figure as near as you can what you might be able to buy from somebody else at? Is that correct?

A. Yes.

Q. Then you make a price, is that correct?

A. Yes.

Q. Does that price usually include, or is that price usually greater than your cost?

A. Why the price usually figures about my cost basis.

Q. Is it usually greater or less than your cost, I understand there is no other element that enters into the

price you make in these three classes, that other element being the price that other people might be selling at, and you take advantage of that, I presume in order to get as much as you can for your product?

A. On a competitive basis, I find the legitimate mills figure about the same cost price basis, when they figure on the same quality of flour manufactured from the same quality of wheat.

Q. That does not answer my question. Does the price at which you sell these four classes give a profit on the basis you sell them generally, usually?

A. I expect it to.

Q. And does not it, usually?

A. Well, do I have to answer that question?

Examiner Sheppard: I think you should.

A. I expect it does, yes, and it generally does give a profit by reason of permitting a larger operation, a greater volume.

Q. And a smaller cost in selling?

A. No, I am figuring the cost basis, the selling does not enter into my cost price.

Q. You get a profit on it usually, if I understand?

A. I am getting a profit if I am permitted to run full time, getting full operation from the mill.

Q. Will you explain to us please, how and in what way the quality of the flour is improved as the result of the operation through which the flour is put in blending machines?

A. Well, I am a miller.

Q. Yes?

A. And the statement I make now might in a sense be used against the milling industry, which I do not intend it to be, but a miller running his flour on the stream, it is packed into the sack rather tight, sewed up, when the flour is warm, having come directly from the rolls. That flour that is allowed to lay for a period is more susceptible to the heat which has been generated during the process, by reason of taking the flour direct from the mill roll, than if run through the blender which it is aeriated after the flour has been allowed to cool. Therefore, the blending process should improve the keeping quality of that flour.

Q. Will you explain to me what—

A. By aeriation.

Q. What does it do to it, does it add to the protein content of the flour?

A. I would say if you had a bad odor of some sort and you were to confine it, it would be more objectionable than if you put it into the open air.

Q. Flour that comes from the mill does not have a bad odor, does it?

A. The heat is generated, and after it is allowed to cool and then aeriated the flour should have a better keeping quality than when packed direct.

Q. The only thing it does as the result of that aeriation, does what to the flour, allows it to cool off, is that all? Just makes it cooler?

A. It makes it more fluffy, gives a better baking quality.

Q. If you will answer my question we will get through quicker. Does that operation of the blending machine add anything to the protein content of the flour?

A. It does not.

Q. Does it add anything to the starch content?

A. No, sir.

Q. If nothing is added to it whatsoever, does it add or change the moisture content?

A. There should be a reduction of the moisture.

Q. The same thing will be true of flour put in sacks and allowed to stand?

A. No, it will not dry out in the same way as when packed in the sack.

Q. Am I to understand then, that just taking flour and packing it in bags and letting it stand for a length of time, does not in any way improve the flour?

A. What length of time do you refer to?

Q. You tell me, I am asking you?

A. I think for a certain length of time it would improve, but beyond that length of time it would deteriorate.

Q. What length of time would it improve?

A. That would be an opinion of a miller, which would be varied, the opinion of a miller, a careful miller.

Q. Your opinion?

A. The character of flour would largely make a difference.

Q. Take the character of flour you make?

A. The character of flour we would make from this crop and next year's crop might be entirely different.

Q. So the length of time flour you would make from this year's crop and that made from next year's crop you could not allow to stand the same length of time for improving it, is that correct?

A. You might not. The weather conditions might make a difference.

Q. Flour packed in sacks, large jute bags, is that correct?

A. Yes.

Q. Packing flour in jute bags and putting them in a warehouse, letting it stand, would that improve the quality of the flour you would make?

A. In my opinion it would not.

Q. You are a member of the Southeastern Millers Association?

A. No, sir; I don't think so.

Q. You ought to know. You do not have to think. Are not you a member of the Southeastern Millers Association?

A. No, sir; I am not.

Q. Have you ever, Mr. Cowgill, tested the temperature of the flour as it went into one of these mixing machines?

A. One of what, mixing machines? I do not understand what kind of flour you mean. You mean flour you have taken from the warehouse?

Q. Well, let us take either one you prefer, have you ever taken the temperature of the flour?

A. No, I have not.

Q. Have you ever tested the temperature of the flour coming from the mill stream into the mixer?

A. I have tested the temperature by my hand, by feeling the flour coming direct from the mill stream.

Q. Have you ever tested the temperature of the flour coming direct from the mill stream into the mixing machine?

A. I do not send it direct to the mixing machine from the mill stream.

Q. Then you have never tested the flour going that way?

A. We do not.

Q. Have you ever tested the temperature of the flour going into the mixing machine, as you put it in it?

A. No.

Q. Have you ever tested the temperature of the flour as it comes out of the mixing machine?

A. No.

Q. Have you ever tested the moisture content of the flour going into such mixing machine?

A. Yes.

Q. Have you ever tested the moisture content of the flour as it came out of the mixing machine?

A. Not for comparative purposes?
Q. You have made no such comparison?
A. No.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

A. You say self rising flour with you is not a continuous process?
A. No, sir.
Q. When you put those ingredients into the mixer and run it through the reels and other parts of the self rising machinery, does a different product come out from anything that went in, in your opinion?
A. My opinion,—

Mr. Bane: I object to that as not redirect examination.

Examiner Sheppard: I think he went into that on direct examination.

Mr. Malone: Well, that is all.

Witness excused.

FRED F. BURNS, being produced, sworn and examined on behalf of Respondent, testified:

Direct Examination by Mr. Malone.

Q. Mr. Burns, where do you reside?
A. Wichita, Kansas.
Q. What is your occupation?
A. Flour milling.
Q. What is your plant?
A. The Consolidated Flour Mills Company.
Q. Is that composed of more than one unit?
A. Yes.
Q. How many?
A. Five.
Q. What is the total capacity?
A. A little over four thousand barrels per day.
Q. You operate a string mill as I understand?
A. They are all grinding mills.
Q. Do you make self rising flour also?
A. No, sir.
Q. Are you contemplating putting in a self rising flour plant?

A. No, sir.

Q. Are you thinking of putting in a blending plant?

A. Yes.

Q. For what purpose?

A. To improve the character of my flour and assist me in guarding against the possibility of shipping any flour that is not up to my standard of grade.

Q. If I understand you then, you consider that you would get those advantages by running your flour through the so-called blending machinery?

A. Yes, I am very certain of it, convinced of it.

Q. Do you know what the Russell Milling Company of Minneapolis has done in that respect?

A. Not of my own knowledge. I have not seen the actual operation, but I know what is a matter of common knowledge in the industry, if that is sufficient.

Q. Proceed.

Mr. Bane: You are not telling this now, with reference to his question, telling what is common knowledge rather than what the concern in Minneapolis has done?

Mr. Malone: I am asking the common knowledge in the trade with reference to this Minneapolis concern.

A. They are operating several flour mills as I am in the vicinity of Minneapolis and in Minneapolis they have a blending plant, if I have used the correct term. They bring the flour into Minneapolis from these various plants and blend it for the purpose I have stated I intend to build a blending plant for.

Q. To get a better product?

A. To get a better product and to insure almost certainly against the possibility of shipping flour that is not up to their standard.

Q. A more uniform product?

A. Exactly.

Mr. Bane: That is a milling concern up there, I assume?

A. Oh, yes.

Mr. Bane: They grind?

A. Yes, sir; they do.

Q. Do you know the class of flour sold in this southeastern territory, Mr. Burns?

A. Fairly well, yes.

Q. What sort of flour is it, what is done about it for that particular trade?

A. Well, the entire southeast is known as a biscuit eating country and the flour made for that class of trade of late years has been treated either with phosphates or certain things added to make what is called self rising flour.

Q. Now, do you consider that distinct manufacturing step, an additional process, if so, give your reasons?

Mr. Bane: I object to that. That is not the question. You have the facts. That is a question ultimately to be decided in the case, not for Mr. Burns to decide.

Examiner Sheppard: Yes, that is the question we have to decide. I have barred the same question on Mr. Bane this morning.

Mr. Malone: We will withdraw then.

Q. What about the product from blended, or from a blended plant, of course I am assuming an honest operation, done in an honest way, what is your opinion as to that product or kind of flour that ought to result from that?

A. I should say it would be an improved flour.

Q. And a more uniform product?

A. Yes, a more uniform product.

Q. Have you sold and do you sell any of your flour to other mills?

A. Yes, sir.

Mr. Bane: Objected to, Mr. Examiner, as irrelevant, incompetent and immaterial.

Examiner Sheppard: Go ahead.

Q. Do you buy, yourself, flour from other mills?

A. I do.

Q. Have you any memorandum as to transactions between yourself and another mill that would throw some light on this, that is, if you do not object to showing it?

A. Well, I have no objection at all, if this is responsive. I have no objection at all to stating the names of any mills as I remember them from whom I buy and to showing invoices, just as a cross section of that nature of business, of purchases from one little mill. I would not object to replying to the questions as to the mills to whom

I sell in my country, but I would object to stating the names of mills I sell in the southeast.

Q. I won't ask that, but I thought it might throw some light if you had invoices showing transactions with your local customers?

A. Just as a cross section I have in my pocket invoices of purchases made and sales to one little mill in Kansas. This is a milling year, one twelve months year. Those are my purchases and those are my sales to one of many mills with whom I do business.

Q. You have handed me a bunch of invoices fastened together from the Mound Ridge Milling Company of Mound Ridge, Kansas, that is the customer or mill to which you refer?

A. It is.

Q. And that is a grinding mill?

A. Yes, it is.

Q. Now, without having seen these, I will ask you first to make this bunch of invoices from the Mound Ridge Milling Company to the Consolidated Flour Mills of Wichita, Kansas, Exhibits, and we will offer them, Mr. Examiner, as Exhibits in regular order.

Mr. Bane: I object to those, Mr. Examiner. I cannot see where they have any relevancy on the issues in this case.

Examiner Sheppard: This is along the same line.

Mr. Malone: It is along the same line.

Examiner Sheppard: You understand my position.

Mr. Malone: I understand.

Examiner Sheppard: I am doing it to let you make your argument.

Mr. Malone: We offer them as Respondent's Exhibits 6 to 13 inclusive. We now offer in like manner copies of invoices from the Consolidated Flour Mills, Company of Wichita, Kansas to the Mound Ridge Milling Company, a number of sheets attached together which exhibits I suppose go in subject to the same objection, as Respondent's Exhibits 14 to 18 inclusive.

Examiner Sheppard: Yes, sir.

Exhibits 6-13 and 14-18

Q. Now, Mr. Burns, these Exhibits just introduced, as I understand you, reflect a twelve months transaction between the two mills?

A. That is right.

Q. Did you ever sell flour to a plant known as the Arnold Milling Company?

A. Yes, sir.

Q. What was that?

A. I sold the Arnold Milling Company in the same way I sold to the Mound Ridge Milling Company with the exception of about one year of time, several years ago, when their plant was destroyed by fire, and of course they wanted to keep their brands alive, their trade names known, their salesmen employed, and for that reason they purchased of me other flour as fast as they sold it, sent their bags to our mill. I filled the bags with my flour without insignia to show it was not made in their mill.

Q. And put up by them to supply their trade?

A. Yes, I suppose so.

Q. Now, you say you have sold mills in the south and southeastern territory. I will not ask their names, but I understand you have made sales of flour to grinding mills in that territory?

A. I presume they are grinding mills, yes, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

Q. Do you know Victor-Murdock?

A. Yes, sir.

Q. Is he still active in politics?

A. I believe so.

Q. I understand he is one of the leading citizens of Wichita?

A. Yes, sir.

Q. I understand he left Washington because he wanted back-fence neighbors?

A. Yes, we both live in a small town and enjoy it.

Q. Do you know the bags in which you packed the flour of the Arnold Milling Company, which they bought from you, did not have on them, "Manufactured for or distributed by," or some such equivalent phrase?

A. I know they did not.

Q. You know they did not?

A. Yes.

Q. What size mill is the Mound Ridge Milling Company?

A. About six hundred barrels per day.

Q. Is that considered a large mill or a small mill?

A. I would call that an average sized mill for Kansas.

Q. Do I understand these are the invoices for one year's business between yourself and that mill?

A. That is right.

Q. I understand you to say you are thinking of putting in a blending plant?

A. Yes, sir.

Q. For the purpose of blending what, flour?

A. My own flour.

Q. Your own flour?

A. Yes, sir.

Q. Not for the purpose of buying flour from other mills and blending with your flour?

A. Not for that purpose entirely, no, sir.

Q. For the purpose of blending your own flour?

A. That is my principal purpose, yes.

Q. Ground and rolled by your own mills?

A. Yes, sir.

Q. Do you have a laboratory in connection with your mill?

A. Yes, sir.

Q. Do you test in such laboratories or with it, the wheat before you buy the wheat?

A. No.

Q. What kind of tests do you put the wheat through to determine the wheat you want to buy?

A. To save time I might say it is tested, the wheat we buy, in a laboratory.

Q. You get a report on that before you buy?

A. That is the official laboratory.

Q. Do you test the flour you get from that wheat at various periods, to see the kind and quality of flour that is coming off?

A. Yes, I do.

Q. And do you intend to say such tests of the flour you make in determining the flour you put in or put together in your grinding plant, when you put it in, in other words, what I am getting at is, you are not just going to take the general run off of your mill and dump it in your blending plant and stir it up?

A. I certainly am not.

Q. You intend to select your flour you put into your blending plant as a result of tests made of that flour in your laboratory, is that right?

A. I am, yes.

Q. Flour ground by your mill?

A. Yes, sir.

Q. In that way you will know just exactly what flour you are putting in the blending plant, is that right?

A. Yes, sir.

Q. And do you intend to laboratorially test the flour after it comes out of your blending plant?

A. Certainly.

Q. In order that you may know exactly the quality of flour?

A. Exactly, keep it uniform and up to my standard by laboratory tests.

Q. You said, I believe, you thought the blending operation improved the quality of the flour?

A. I do.

Q. To be frank with you I have not gotten very clear in my mind how it does, I am not denying that it does, but can you make it clear to me how, in what way, what you mean when you say it improves the quality?

A. I am afraid I cannot, but I will do my best.

Q. All right?

A. We have laboratories in which we are constantly making experiments and we have discovered lately by laboratory experiments for some reason the blending together of flour, particularly when flour is to be used for biscuits, makes a lighter and fluffier flour. I am not a chemist and have no technical knowledge of milling and I am unable to explain it. I rather doubt if even my technical men can explain, but we only know it is a fact so far as the laboratory shows.

Q. Is that just the result of being allowed to pass through the flour?

A. I have heard the testimony on that subject.

Q. I am asking what you think about it? Not what someone else thinks?

A. I cannot agree with that, except in case of flour that is unsound, to the extent it has a foul odor. I believe it would lose it but I would not make such a flour nor buy it. No, I do not believe the aeriating of flour is what accomplishes it. I frankly do not know what does accomplish it.

Q. In this blending process the particles of flour are not broken any further, are they?

A. There is that possibility, there can be that explanation, but I do know biscuit made of the flour before it has been blended and resifted in the process of blending is not as fluffy and not as white, not as palatable as biscuit made after that process.

Q. Is that due to the particular grades of flour you blend, due to the process or what?

A. I am sure it cannot be due to the grades, because the grades may be exactly the same. I may blend exactly the same grades I have first made biscuits out of, otherwise the experiment would be valueless.

Q. Is it a fact biscuits are better because two different flours or two different grades of flour are mixed together, or due to the fact they have been stirred up and allowed to air, what is your explanation?

A. In my opinion there may have been a change in the granulation of the flour, the particles might have been broken up still further than is possible in grinding between steel rolls. Also there is a fact, there is a difference in the fermentation period, in some percentage in the grade of flour made at one mill, to that made at some other mill, but made out of the same kind of wheat. Now, in the housekeepers, who have the job of making biscuits. It is an important point to have flour of the proper fermentation period. It is my intention to take two different flours having two different fermentation periods, of such wider periods of fermentation, wider length of time, and blend them to prevent the possibility of baking the dough at the wrong time.

Q. Flours made of exactly the same wheat coming from different mills will be wholly different?

A. That is right, yes.

Q. It may be?

A. Try as hard as we can in our business with our same brands, we have five mills to fill orders indiscriminately from all the mills. We try as best we can to test the quality and prevent a lack of uniformity.

Q. There will be a difference from different mills?

A. Sometimes to the extent it hurts my business.

Q. On the same wheat?

A. That is right. That is why I am planning to put up the blending plant.

Q. Will you tell me just how a blending machine could reduce the particles of the flour?

A. Well, I am sorry I am not technically minded enough to explain.

Q. Are you a practical miller?

Mr. Malone: Wait a minute.

Mr. Bane: He said he was sorry he was not technically minded to explain.

Mr. Malone: He meant as an engineer. If he has an explanation as a miller?

A. May I finish the sentence?

Q. Are you a practical miller?

A. No, sir.

Q. You are not a practical miller?

A. No, sir.

Q. Then what kind, can you tell me what kind of experience you have got or had that leads you to believe that that blending machine can reduce the particles or units of flour you put into it?

A. I believe it is due to the silk bolting cloths, perhaps as much as anything else.

Q. That is not in the mixing machine, is it?

A. Oh, indeed, it will be in mine.

Q. I am asking generally?

A. I cannot say.

Q. As the blending machine has been described to us it did not include within the mixing machine, did not include within the blending machine, any silk?

A. I cannot imagine any one not using silk bolting cloth on the reels.

Q. That is not in the mixer?

A. That is a part of the process.

Q. Confine yourself to the mixer, if you will. Do you think the mixer, the utensil in which the flours you are going to blend are put and stirred together, do you believe there, the particles of that flour, the units are reduced?

A. I believe I am unable to answer the question. I have told you all I can.

Q. All right. You think there could be some reduction of the units or something as a result of the rebolting on the reel?

A. That is my personal opinion.

Q. That takes place as the result of, or after the flour is brought from the mixer?

A. Yes, that is my own explanation of the phenomena if that is right.

Q. Do you mean by that, there is an actual reduction in the units or particles of flour, or do you mean the larger particles are taken out?

A. No.

Q. That is nothing but a sifting operation, it bolts, sifts the flour?

A. That is true, for the purpose of removing large particles of dirt, foreign matter, that is the reason, but in fact every particle of the flour goes through the bolting cloth and may change in form?

Q. It has to be that size to get through?

A. Exactly.

Q. You do that same operation in your mill whether you blend or not?

A. Yes, sir.

Q. How many times do you do that operation before you pack it?

A. Not being a miller I am afraid I could not qualify to answer except a wild guess. I should say twenty-five times.

Q. You are not a miller and really do not know, and it is just a guess on your part that the particles are reduced?

A. Just a guess. Yet, I do know there is an improvement.

Q. Are you going to put in a plant for making self-rising flour?

A. No.

Q. Are you going to use the same plant you put in to make self-rising flour?

A. No.

Q. Are you a member of the Southeastern Millers Association?

A. No.

Q. Do you know whether or not the blending operation changes in any way the protein content of the flour?

A. I do not know that. I have a pretty good idea.

Q. Do you know whether or not it changes in any way the starch content of the flour?

A. I do not know.

Q. Do you know whether or not it changes in any way the moisture content of the flour?

A. I do not know.

Mr. Bane: That is all, Mr. Examiner.

Mr. Malone: That is all.

STIPULATION.

Mr. Bane: Stipulate in the record that Mr. Sims, Mr. Sparks, and Mr. Reis, who have just testified on behalf of Respondent are members of the Southeastern Millers Association.

Examiner Sheppard: There being no further witnesses we will now adjourn until ten o'clock A. M. tomorrow.

The further hearing was thereupon adjourned at five o'clock P. M. to be resumed at ten o'clock A. M., June 28, 1929.

Louis A. Miller

Docket No. 1601.

Nashville, Tennessee, June 28, 1929.

Met pursuant to adjournment, 10:00 o'clock A. M. Before:

William W. Sheppard, Examiner.

Appearances:

Mr. Baldwin B. Bane, for the Commission.

Mr. Thomas H. Malone, for the Respondents.

LOUIS A. MILLER, being produced, sworn and examined on the part of the Commission. Testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Miller?

A. 733 Argyle Avenue.

Q. Where, Nashville, Tennessee?

A. Yes, sir.

Q. What is your business?

A. Flour Mill.

Q. Do you operate a mill that grinds wheat into flour?

A. No, sir.

Q. When you say flour mill, what do you mean by flour mill?

A. I mean that we are conducting a blending business, where we buy from the miller, then we put this flour through our manufacturing process, and put it out to the trade.

Q. Do you have a plant?

A. I do not own the plant, myself. I have a working arrangement with them.

Q. Who do you mean by "them"?

A. With the firm who is taking my flour and packing it for me, and I pay so much per barrel to them for packing.

Q. Where is your office?

A. Right at the present time I have only a temporary office, due to the fact that I formerly had an arrangement similar to the present arrangement with the Mero Mills. The Mero Mills were located at 2410 Third Avenue North, but as I understand the plant has ceased business, the mill is idle.

Q. Did you have an office with the Mero Mills?

A. My office was in the plant.

Q. Where is your office now?

A. Several years ago I had a room built for an office, and pending final decision of what I would do, I am at the present conducting this business from my residence, 733 Argyle Avenue.

Q. How long have you been conducting the business in that way, that is, from the office in your home?

Mr. Malone: Wait just a minute. I do no see the relevancy of all this, Mr. Examiner, Mr. Miller has a case. He has been sued by the commission. We are not trying his case.

Mr. Bane: All I want to do is find out who the witness was I was putting on the stand.

Mr. Malone: You have now found out.

Examiner Sheppard: I do not know yet. I will let him go on and see.

Q. But, do you now have an arrangement for packing flour, if so, with whom?

A. J. H. Wilkes & Company.

Q. Did the Mero Mills at one time have an arrangement with the Wilkes Company?

A. At one time, yes, sir.

Q. Did they at the time you had your arrangement with them?

A. No, sir.

Q. Do you sell the flour you have packed for you out in the southeastern states?

A. Yes, sir.

Q. Do you come in contact with other concerns in Nashville selling flour throughout the southeastern states?

A. Several of them.

Q. Have you ever owned a plant for mixing up the flours you sell?

Mr. Malone: I object to that, Mr. Examiner.

Mr. Bane: Withdraw the question. Please mark these for identification.

(Two papers were then marked Commission's Exhibits 56 and 57.)

Q. I hand you two papers, marked for identification, Commission's Exhibits 56 and 57, respectively, and ask you to please tell us what those are?

A. These letters are quotations which go out from my office weekly, or almost weekly.

Louis A. Miller

Q. Were these two letters sent out by you?
A. Yes, sir.
Q. From your office?
A. Yes, sir.
Q. To your trade?
A. Yes, sir.
Q. And to concerns that you were attempting to sell flour to?
A. Yes, sir.
Q. I notice that in the letter marked Commission's Exhibit No. 57, for identification, you refer, "one of such concerns here in Nashville, is operating under no less than six trade names"?
A. Yes, sir.
Q. What concern were you referring to? I will give you the letter.
A. I was referring to the Watauga Milling Company.
Q. You were referring to the Watauga Milling Company?
A. Yes, sir.
Q. I notice that in your letter, marked Commission's Exhibit No. 57 for identification, you refer to a concern from which some merchant bought flour which was unsatisfactory, and then bought from another concern, or what he supposed was another concern, under another name, and later found he was buying from the same concern, that the two names were used by, or represented the same concerns, what concern were you referring to there?
A. The Southern Flour Mills.
Q. Is the Southern Flour Mills and the Watauga Milling Company one and the same concern?
A. I understand they are.

Mr. Malone: Now, Mr. Examiner, I have allowed the counsel to go on to get his start so I could make my point. I move to strike those answers from the record. And just now I want to further move to strike those questions and answers from the record and as soon as he offers his exhibit, I wish to object to them.

Mr. Bane: I merely asked these two questions, Mr. Examiner, to show the relevancy of the exhibits. I now offer these two papers as Commission's Exhibits Nos. 57 and 58.

Examiner Sheppard: What is your objection, Mr. Malone?

Mr. Malone: My objection is this, Mr. Examiner, and you will see if you will look at the exhibits: In the first place it is a transaction between third parties. Here is what Mr. Miller said in a letter to his trade two or three years ago.

Mr. Bane: The letters are dated, Mr. Examiner, in January and February, 1928.

Mr. Malone: All right, I do not care whether it is two years ago or six months ago. These are letters written to the public between third parties and making charges against somebody, and that has never been competent evidence in any court. If he wishes to make any charges, if they were relevant in this case, and if they were covered by the pleadings, which they are not as I shall show in a minute, he would have to bring his witnesses here, and he cannot attack the credibility or anything else in that way, by showing some third party wrote a letter a year or two years ago in which he made certain charges to the public. That is no way to prove any fact. It is hearsay of the third degree, and for that reason incompetent. And I make this further point, may it please the court, there is not one word in this complaint which justifies any such evidence as this. If the Watauga Mills shipped flour, that is a matter which they might have done under the name of Mills Company or anything else. The whole point in this complaint, and of the others, I may say, which have been filed against the Nashville merchants, is that by using the word mills, they have misled the public, and as the Commissioner will remember all his witnesses, eighteen or twenty, have been introduced along that line, the Commission's whole evidence is along that line. Whether this man puts out good flour or bad flour, there is no such charge in the complaint, and nothing to cover any such point as this. I thereupon object.

Examiner Sheppard: What do you say, Mr. Bane?

Mr. Bane: These letters are not introduced to show the quality of the flour, nor do they show the quality of flour put out by the respondents here. I have if you will remember, objected—

Examiner Sheppard: One of your questions was to that end.

Mr. Bane: No, I only asked what concern he was referring to, and had to quote from his letter to ask what concern. I have repeatedly objected to

that form of testimony when Mr. Malone has attempted to introduce the quality of flour these blenders put out. The complaint charges Mr. McCarthy with operating under various and many trade names, which trade names mislead the public. I have here a man, a competitor of Mr. McCarthy's, in the same character of business, who sees his own trade, who tells of the conditions that results from the use of those trade names, sundry trade names by this particular respondent, Mr. F. J. McCarthy. The reason for the use of those many trade names was not brought out by me, but brought out by my friend Mr. Malone in his cross-examination by Mr. McCarthy the first day he was on the stand. I am introducing this evidence, these letters written before any action was taken, or contemplated by the Federal Trade Commission to show what this man found to be the result of the use, and the effect on the public and the buyer of the use, not by blenders generally of the use of these many trade names, but of the use of the many trade names by this particular respondent, particular trade names, involving the word Mill, by this particular respondent.

Examiner Sheppard: You do not offer the letters to show the quality of the flour.

Mr. Bane: Not as to the quality of the flour.

Mr. Malone: Now, Mr. Examiner, there is nothing in this complaint, and I think I have read it carefully, which makes any charge that these trade names are used to shift from one brand to another. There is absolutely no such charge. It is in connection with the use of the word mills, all the way through, and the supposed deception of the public by the word mills. Now, to refresh your mind about that, "there are no corporations or other organizations corresponding to the aforesaid trade names, Watauga Milling Company, etc." which respondent uses, and they are fictitious in so far as they indicate separate businesses or plants." Now, that is the only charge in this complaint.

Mr. Bane: And that shows exactly this.

Mr. Malone: No.

Mr. Bane: And it shows the effect of this as a practice.

Mr. Malone: He has not charged any such effect, may it please the Court, he has charged the effect of using the word mills, that it is an aggravation of the charge of the use of the word Mills, because he not

only does that in his regular company, but he does it with all these others, and it is in connection with the word "mills" and the practice he is talking about, would be just as well if he called himself, "McCarthy Flour Company," "John Smith Flour Company" and "Bill Jones Flour Company." Every charge in this complaint is in connection with the word "mills." And if this is to be a test case, or any thing like it, we have got to go on the word "mills." Every one of these complaints is drawn with that effort, and there is no attempt in this complaint that is a fraud, that is wholly irrespective of the word mills. Now, if they want to make other cases on that line, we will try it on that line. It is not in this record.

Mr. Bain: Mr. Examiner, Mr. Malone read parts of the complaint to which he refers, but he was very particular in his examination of Mr. McCarthy to bring out the reasons for Mr. McCarthy using so many trade names having in them the words "mill" or "milling." I ask to offer those letters, as they become particularly pertinent as the result of the cross-examination by Mr. Malone.

Mr. Malone: And also on direct examination. I do not think I am mistaken about your asking about the use of these names.

Mr. Bane: I asked if he used them, but I do not think I asked anything about his reasons.

Mr. Malone: My recollection is different. But, of course the report will show.

Examiner Sheppard: I think, gentlemen, it is making a mountain out of a mole hill. For the purpose of the record and without in any way accepting these two exhibits offered by the Commission, as going to testify in any particular as to quality of respondent's goods, but only so far as the said exhibits may have reference to the trade names used by the respondent, are the exhibits accepted, and the motion to strike overruled and the motion to exclude the exhibits overruled.

Mr. Malone: I take an exception.

Examiner Sheppard: The exception is granted only in that respect.

Q. How long have you been in this business, Mr. Miller?

A. Since 1904.

Q. Since 1904?

A. Yes, sir.
Q. All of the time here in Nashville?
A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: During that time have you had a mill, Mr. Miller?

A. No, sir.

Examiner Sheppard: You have always arranged with others to have flour—

A. Arranged with others to pack for me.

Examiner Sheppard: And then you sell under your own brand?

A. Yes, sir.

Examiner Sheppard: All right, Mr. Malone.

Cross-examination by Mr. Malone.

Q. Mr. Miller, did you have any clash with Mr. McCarthy about the use of a trade name, if so, tell us about that?

A. Mr. McCarthy was operating under three different names, when he took up the fourth name.

Q. Now, what was your trade name?

A. My trade name was Southern Milling Company.

Q. And what did he take up, Southern Mills?

A. The fourth name he took up was Southern Flour Mills. I thought it rather odd that Mr. McCarthy and I, knowing one another, knowing we were competitors of one another, that we were going after practically the same business, that Mr. McCarthy would be so seemingly unfair or unethical as to adopt a trade name so very similar to one of his competitors, when he already had three others, and another name would have been just as well as Southern Flour Mills.

Q. For that reason it made you pretty mad?

A. Naturally it created an ill feeling in me towards Mr. McCarthy.

Q. And these letters were written while you entertained such feeling, were not they?

A. Yes, that is true.

Q. Mr. Miller, did you find—

Examiner Sheppard: When was that change?
Mr. Malone: Yes, tell us about that.

A. When was that change?

Examiner Sheppard: Yes, when did Mr. McCarthy adopt the Southern Flour Mills?

A. About four or five years ago.

Examiner Sheppard: That is as near as you can give it to us, is it?

A. Yes, sir, that is as close as I can give it.

Examiner Sheppard: All right, go on.
Mr. Malone: Now, without waiving my exception as to these letters.

Q. Do you know of your own knowledge, or is it hearsay or information you got from some one else as to this alleged transaction where the flour came back?

Examiner Sheppard: I am not going to go into that, Mr. Malone.
Mr. Malone: All right, I will withdraw that question.
Mr. Bane: You mean going to the quality of the flour?
Mr. Malone: Exactly.
Examiner Sheppard: Unless you mean it to go to something else, I am not going to notice the quality in the letters.
Mr. Malone: I was just onto that.
Examiner Sheppard: I agree with you, that is not an issue in this case, quality is not. I am not here to discuss quality between flour men. It is not in the complaint and we have nothing to do with it. I will keep it out of my findings.
Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. The information contained in those letters, that you set out in those letters was gotten by you from buyers of flour that you came in contact with?

Mr. Malone: Ask him where he got it. I object to that, Mr. Examiner.

Q. Where did you get the information contained in those letters?

A. Just what information do you refer to, Mr. Bane?

Q. That information with reference to the Wautauga and Southern Flour Mills, that you set out in these two letters?

A. Wait, I did not exactly understand the question.

Q. Take the letters and look at them.

Mr. Malone: Whether that is hearsay or what it is.

Q. Do you refer to certain information? I will ask you where you got the information set out in the first three paragraphs of Commission's Exhibit 58.

A. That information came to me through the mail, addressed to the Southern Milling Company, but should have been addressed to the Southern Flour Mills. There was a letter written from Mr. McCarthy's office to one of his customers who had a shipment of flour in depot and refused, and in this letter, I do not remember the contents of that letter now, it has been some time ago, but I had so many various letters on file I had been accumulating for another purpose, that this consignee was giving his answer as to why he did not pay the draft and remove the shipment from the depot, and it was because of the inferiority of the previous shipment.

Q. I am not asking about the quality of the flour.

A. That is how come me to get the information. In other words the letter written—

Q. You say the letter was written by the buyer?

A. I say the letter was written by the seller to the buyer.

Q. To the buyer?

A. Yes, sir.

Q. And it was from those letters you got that information contained in the first three paragraphs?

A. Yes, sir.

Mr. Bane: That is all.

Examiner Sheppard: Do I get the import there, that mail meant for Mr. McCarthy came to you?

A. I was written by Mr. McCarthy, the original letter was written by Mr. McCarthy, on the Southern Flour Mills Letterhead, and the consignee replied at the bottom, and instead of addressing it to the Southern Flour Mills, addressed it to the Southern Milling Company. Our mail gets confused.

Recross-examination by Mr. Malone.

A. So, you do not know a word of truth of the charge?

A. No, sir.

Q. Just what the man said at the bottom of the letter?

A. Yes, sir.

Q. Absolutely hearsay to you?

Examiner Sheppard: All right, let us pass on to something else.

Mr. Malone: That is all.

L. Z. STEEL, be produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live?

A. Philcampbell, Alabama.

Q. What is your business, Mr. Steel?

A. I run a little grocery store.

Q. In Philcampbell?

A. Yes, sir.

Q. Retail or wholesale?

A. Retail.

Q. Do you run it in your name or under a firm name?

A. G. W. Steel & Son.

Q. How long have you been in that business?

A. About a couple of years.

Q. What does the word "mill" or the word "milling," when used in the name of a concern selling flour, Mr. Steel, indicate or mean to you as to the character of the concern?

A. Well, I take it to be a grinding, actual grinding mill.

Q. Actually grinding the wheat into flour?

A. Yes, sir.

Q. Which do you prefer to deal with or buy flour from, if you have any preference, a concern actually grinding the wheat into flour and selling, it, or a concern buying flour from others who grind and then mixing it or blending it and selling?

A. I would prefer buying from a mill.

Q. That is, one who grinds?

A. Yes, sir.

Q. Why?

A. It seems to me like it would come a little cheaper buying from them, or give better results.

Q. Better results in what way?

A. Well, in the food.

Q. You mean you think it is a better flour?

A. Yes, sir.

Q. And, also, you think you would get it cheaper?

A. Yes, sir.

Q. Do you or not find there is any more uniformity in the quality in the flour coming from the mills, or do you believe there is, mills as you use it, then those who mix or blend the flour?

A. Well, you mean?

Q. Which do you think produces, so far as your experience goes, or which do you find produce the most uniform flour?

A. I believe the mills.

Examiner Sheppard: Have you ever used this other flour?

A. I reckon I have, yes, sir.

Examiner Sheppard: Used both kinds?

A. Yes, sir.

Q. Do you handle both self-rising and plain flour?

A. Yes, sir.

Q. From what sources do you buy flour?

A. I buy now from the Colonial Milling Company or Columbia Milling & Elevator Company.

Q. Where are they located?

A. Nashville and Columbia.

Q. Nashville and Columbia, Tennessee?

A. Yes, sir.

Q. Do those concerns both grind wheat into flour?

A. I think they do. I have never seen them.

Q. You understand they do?

A. Yes, sir.

Q. That is what the name means to you?

A. Yes, sir.

Q. Have you bought from any other concerns?

A. Not lately. Last year I bought some from the Watauga Milling Company and the Nashville Rolling Mills.

Q. You bought last year from the Watauga Milling Company and the Nashville Rolling Mills?

A. Yes, sir.

Q. At the time you bought from the Watauga Milling Company, what character of concern did you think or understand that to be?

A. I thought it was millers, all millers.

Q. That is, one grinding the wheat into flour?

A. Yes, sir.

Q. When you were buying from the Nashville Roller Mills, what did you understand that to be?

A. I thought they were all milling companies, all ground it.

Q. Ground the wheat?

A. Yes. I am now in the flour business. I never handled it.

Q. What does the phrase "manufacturer of flour," when used in connection with the name of a firm selling flour mean, Mr. Steel?

A. I do not understand the question.

(The question was read to the witness.)

Q. Does that mean one who grinds wheat into flour, or mean one who buys flour from one who grinds and mixes it up?

A. It would be a mixer, the way I understand it.

Q. Why did you stop buying flour from the Watauga Milling Company?

A. I just thought, some salesman told me it was all mixers, I thought I would buy from a mill and may be I would get cheaper prices.

Q. Why did you stop buying from the Nashville Roller Mills?

A. On the same reason.

Mr. Bane: That is all, Mr. Examiner.
Examiner Sheppard: Cross-examine.

Cross-examination by Mr. Malone.

Q. What is your age, Mr. Steel?

A. Age?

Q. Yes.

A. I will be 31 this July.

Q. Did you ever buy any of the brand known as Sun Sweet Flour?

A. It seems like I did the first year I went in business. My father used to buy a little before we went in business, and I think he bought a few after we bought out this little grocery store.

Q. Did you find that a satisfactory flour?

A. Yes, it proved to be all right.
Q. Do you remember who you bought that from?
A. No, I do not.
Q. You do not remember that you bought that from Mr. Miller, a blender here in Nashville?
A. No, I do not.
Q. I believe you said through the salesmen of the wheat mills you found out about the mixers and blenders?
A. Yes, sir; some of them told me.

G. L. WAKEFIELD, being produced, sworn and examined on the part of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Wakefield?
A. I live at Carbon Hill, Alabama.
Q. What is your business, Mr. Wakefield?
A. General merchandise.
Q. How long have you been in that business?
A. About twenty years.
Q. Do you handle flour?
A. Yes, sir, we have a grocery department that handles it. We have a department store, sells everything.
Q. Both plain and self-rising flour?
A. Yes, sir.
Q. What does the word "mill" or the word "milling," Mr. Wakefield, when used in the name of a concern selling flour, mean or indicate as to the character of that concern?
A. Well, I can only state what I thought it meant.
Q. All right, sir, what about it?
A. I thought it meant manufacturing flour.
Q. By manufacturing flour, you mean what?
A. Grinding flour, putting it up and selling to the trade direct.
Q. What does the phrase or term "manufacturer of flour" mean?
A. I thought it was grinding and putting it up, preparing it and selling it.
Q. Grinding the wheat into flour, packing it and selling?
A. That is the way I have looked at it. I never gave it any thought.
Q. That is what it indicates to you?

A. Yes, sir.

Q. Which do you prefer to buy from, Mr. Wakefield?

A. Whoever I can buy the cheaper from. I was always under the impression that the manufacturer would have a little better price than the jobber who buys and repacks and sells.

Q. That is, by manufacturer, you mean the one who grinds the wheat into flour?

A. Yes, sir.

Q. You thought by buying from them you were saving a middle-man's profit?

A. I thought that, yes. I could be wrong.

Q. I am asking what you understood.

A. Yes, sir. I understood that.

Q. From what concerns do you buy flour, Mr. Wakefield?

A. Watauga Milling Company mostly, most all of our flour, we buy a little stuff from John Wade & Company of Memphis.

Q. You buy from the Watauga Milling Company?

A. Yes, sir.

Q. Is that concern grinding wheat into flour, making it or one which buys from others and mixes it?

A. I did not know until to-day. I did not know anything about it until this morning.

Q. What?

A. I say I didn't know anything about it until this morning.

Q. When you got here this morning?

A. I never heard it questioned.

Q. What did you find out about it?

A. All I have heard of it is, I know that they buy the stuff after it is ground and put it up again, buy the wheat already ground from some other concern.

Q. You heard that when you got here this morning?

A. Yes, sir.

Q. You had never heard it before?

A. No, sir.

Q. Did you ever buy flour from the F. J. McCarthy Milling Company?

A. Yes, sir.

Q. What character of concern did you understand that to be?

A. I didn't know. I thought it was the same as this other, I thought I was buying direct from the mills.

Q. You thought you were buying direct from the mills that grind the flour, you mean?

A. Yes, sir.

G. L. Wakefield

Q. Have you, or did you learn that is not true of F. J. McCarthy Milling Company?

A. Just hearsay, all I have hard, until this morning. I did not know until this morning what it meant. I did not know what I was subpoenaed for.

Q. Where did you hear that this morning?

A. I heard it in here.

Q. In here, listening to the testimony?

A. Yes, sir.

Q. Who told you that this morning?

A. I don't know that anybody told me. I just heard the testimony. I was under that impression from the testimony.

Q. That is the only source you learned it from?

A. Yes, sir.

Q. Did you know there was any relationship between the Watauga Milling Company and the F. J. McCarthy Milling Company, or did you understand that they were two different concerns?

A. No, sir. Well, yes, I thought they were two different flour concerns.

Q. You thought they were two different flour concerns?

A. Yes, sir.

Q. You still think so?

A. I never heard it questioned, I don't think.

Q. You still think so?

A. I think so, yes. I have never heard it disputed.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: How long have you been a customer of the Watauga Milling Company?

A. A long time. I have a buyer in the grocery department that has been buying about four or five years, possibly longer than that. I really do not know. I forget. I could not tell you.

Q. Examiner Sheppard: Four or five years?

A. Yes, sir; at least that long.

Examiner Sheppard: The same thing as to the F. J. McCarthy Milling Company?

A. No, the Watauga Milling Company. It seems to me like the F. J. McCarthy made a little higher stuff than the Watauga Milling Company. We bought that stuff. I think they are buying high priced goods out of Memphis from John Wade, and buying the Watauga Milling

Company's medium priced stuff here now.

Q. What is the name of the concern in Memphis you buy from?

A. John Wade & Company.

Q. John Wade & Company?

A. John Wade & Sons, I believe it is.

Q. What is that, a miller, jobber, blender or what?

A. I don't know. I never heard it questioned.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. Which do you sell the most of to your trade?

A. You mean brands?

Q. Yes?

A. Well, medium priced brands.

Q. Watauga brands?

A. Yes, practically all of it.

Q. Don't much the greater per cent of your trade want the lower priced flour?

A. Yes, sir.

Q. This flour that you have bought, gave satisfaction to you and your trade?

A. Mighty good flour, never had any trouble with it. We tried the flour and it gives our trade the best satisfaction of any flour we get for the price, is all I know about it, what the man tells me that buys it. I don't work in that department. I have several different departments and keep the records and books.

Q. You get it at a good price?

A. Yes, sir; a little cheaper than other flour I have handled.

Q. Of course as long as you get that, the thing that guides you like any other merchant is the price, the quality of the article and the service you get from the seller?

A. Yes, sir.

Q. And those determine your purchases, always?

A. Yes, sir.

Mr. Malone: That is all.

Mr. Bane: All right.

R. W. TAYLOR, being produced, sworn and examined on the part of the Commission, testified:

R. W. Taylor

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Taylor?
A. Clanton, Alabama.
Q. What is your business?
A. Wholesale groceries.
Q. How long have you been in that business?
A. At Clanton, four or five years.
Q. Were you in that business anywhere else before you went to Clanton?
A. Yes, I was, myself.
Q. Where?
A. Anniston, Alabama.
Q. In that same kind of business, wholesale groceries?
A. Yes, sir; six years there.
Q. Under what name is the firm operated in Clanton?
A. Downs Grocery Company, for the reason my brother and I bought an interest, and we never had the name changed, Mr. Downs still has an interest with us.
Q. Do you handle flour?
A. Yes, sir.
Q. Both plain and self-rising?
A. Yes, sir.
Q. What does the word "mill" or the word "milling," when used in the name of a concern selling flour, mean or indicate as to the character of that concern?

Mr. Malone: That is, as far as he is concerned.
Mr. Bane: Yes.

A. The word "mill" or "milling."
Q. Yes.
A. Regarding flour?
Q. Yes.
A. Well, I would term it to mean the manufacture, actual grinding of wheat into the finished product called flour.
Q. The finished product called flour?
A. Yes, sir.
Q. Does the phrase manufacturer of flour have the same significance?
A. I would think so.
Q. Which character of concern do you prefer to buy flour from, Mr. Taylor, a concern actually grinding the wheat into flour and selling it, or one buying the flour from some one else who has ground it and then mixing that flour up and selling it under its own name?

A. We prefer to buy from the millers.

Q. Why?

A. Well, for more reasons than one.

Q. Give them to us, please, sir, all of them if you please?

A. The first one and main reason, we know the grade we are getting, and we can tell our trade about the grade we are getting, and the manufacturer that manufactures this flour is going to stand behind the particular brand he puts out.

Q. That is, when you speak of manufacturer?

A. The one that mills.

Q. Grinds the wheat into flour?

A. The one that grinds the wheat into flour.

Q. All right, give us the other reasons?

A. Then, we can get the grades we want, and I feel like they are in better position to give us better flour for the same money.

Q. For the same money?

A. Yes, it begins at the mill.

Q. Do you come in contact, Mr. Taylor, with your trade, the concerns to whom you sell? Do you come in contact any with your trade, the concerns to whom you sell, the retail grocers?

A. You mean myself, personally?

Q. Yes.

A. Yes, I work the trade some myself.

Q. Do you know what your customers understand the character of the concern, when the word "mill" or "mills" is used in the name of the concern packing the flour, is?

Examiner Sheppard: Say yes or no, if you know say yes, if you do not know, say no.

A. I know what they say.

Q. What?

A. Very frequently, practically every week, I ask about some flour. They say, "I have got some coming from the mill." We do not discuss that. By next week I say may be something about it, and I see some mill I never heard of in Nashville, or some other place, which my experience in the business, I know is a blender, but I do not argue that with the trade. If he is satisfied, let him be satisfied.

Q. When your customer or retailer says he has got some flour coming from the mill, what does he mean, if you know by "mill"?

A. I never argue with them. He knows as much about it as I do.

Q. What does he mean by that? Does he mean that to be one who grinds flour and sells it or one who mixes the flour up?

Mr. Malone: That is going mighty far.

Examiner Sheppard: That is suggestive.

Mr. Bane: I am asking which he means. He was speaking in terms.

A. That they are getting flour from the mill who manufactures, grinds the wheat into flour, but I say we do not discuss it.

Examiner Sheppard: You do not tell them about it, if he is wrong?

A. No, sir. May be a few times, if I know they are blenders, instead of millers.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. Mr. Taylor, your customers all say, "We are getting our flour from mills which grind wheat into flour," is that the phrase they all use to you?

A. No, sir; they do not use that phrase.

Q. I thought that was the phrase you were attributing to them?

A. That is the phrase they lead me to believe. As I say, I do not discuss this. We do not discuss grinding wheat nor anything about that when they are talking about flour.

Q. You do not know what they mean by "mill," they may know all about self-rising plants? You do not know, because you do not discuss it with them?

A. No, I made that statement a few minutes ago, but later on I would see the flour in there, and I would know from my own personal knowledge it was from a blender.

Q. You do not know what they know, and do not pretend to know?

A. Yes, they speak of it as coming from a real flour mill.

Q. Now, let us get back. They speak of it as coming from a real flour mill. They say they are getting it from a mill?

A. They say, we have so many barrels coming from the mill. Then, I have already testified in my judgment, a mill pertains to flour, as the manufacturing and grinding of wheat into a finished product of flour.

Q. I see, that is what is in your mind?

A. Yes, sir.

Q. Now, Mr. Taylor, who do you buy flour from?

A. We buy from four different mills.

Q. Let us have them?

A. H. R. Cole Milling Company.

Q. Where is that?

A. Chester, Illinois.

Q. All right.

A. Acme Mills, Hopkinsville, Kentucky.

Q. All right.

A. Hopkinsville Milling Company, Hopkinsville, Kentucky; Fuhrer Ford Milling Company, Mount Vernon, Indiana, and Snell Milling Company, Nashville.

Q. That is a grinder, is it, the Snell Milling Company?

A. No, sir; I happen to know it is not. I don't know it either, but that is my opinion, my understanding. I do not know anything I have not seen.

Q. So, you do not know whether these others are grinders, you have not been up there and seen them?

A. Yes, I have been to a part of them.

Q. Which ones?

A. I have been to Cole and I have been by the Fuhrer Ford, but did not go in.

Q. So, you do not know what they do?

A. Yes, I have seen the Cole company grinding their flour.

Q. You have seen Cole, but this Fuhrer-Ford, you have been by them?

A. Yes, sir.

Q. You have not been by the Acme Mills, and have not been by the Hopkinsville Milling Company?

A. No, sir.

Q. You do not know what they do?

A. I have a picture of the plant in my office.

Q. That is just the outside?

A. Yes, I have just been by the outside.

Q. Now, what would you think that was, if somebody just showed you that picture? What do you think that was? I am referring to respondent's Exhibit No. 2?

A. I do not see anything in Cole Milling Company that looks like that.

Q. That did not answer my question. What would you say that was, just give me an idea?

A. It could be a flour mill.

Q. Could be, yes.

A. From the looks, but I would not think so, just to look at it.

Q. You say you would not think so?

A. No, sir.

Q. Go on and tell us why?

A. For one reason, it don't show it. I do not see the entire mills here. It shows the sacking, and that is all. That is like looking at a liquor still and just seeing the worm, not seeing the other part.

Q. But, if you saw the worm, you would think there was some liquor around there, would not you?

A. I don't know, I saw a fellow with one on a car the other day putting in wheat.

Q. If you saw one out in the woods there, you would think you could leave a dollar on the stump and get that liquor?

Mr. Bane: Do you want him to answer that?

Mr. Malone: I do not want to incriminate your witness.

Mr. Bane: I am perfectly willing for him to answer that.

Q. You say you do not see the flour going into bags. Look at Respondent's Exhibit No. What do you think that is?

A. Well, I could not say that this picture would look like a flour mill to me, it could be possible.

Q. What is the trouble with it?

A. For instance, they could be sacking feed of some kind, or laying mash, something like that.

Q. Or, they might be sacking peanuts?

A. Yes, or something else.

Q. And that might be—

A. Neither one of those look like a flour mill to me.

Q. It looks like some kind of a manufacturing plant, don't it?

A. Yes, sir.

Q. You would say it was some kind of manufacturing plant, would not you?

A. Sure, if it was nothing but peanuts, it looks like they are sacking something, regardless of what it is.

Q. I am not asking you to look at what is on the sacks, because I want you to judge by the machinery. It

shows on the sacks what it is. Do the jobber salesmen or mill salesmen, or salesmen from the jobbers handling the mill products, come around to see you occasionally?

A. You mean the mill who manufactures flour, grinds it, manufactures it?

Q. Yes, say the Cole Milling Company, the Acme Mills, the Hopkinsville Milling Company, Fuhrer-Ford Milling Company and so on?

A. Yes, sir; they call on us occasionally.

Q. How long have they been doing that, since you were in business there?

A. Yes, sir.

Q. Do these mills make self-rising flour that you handle?

A. Yes, sir.

Q. How do you think they make that, do you think that they put it in the wheat, just stick it in the hopper together?

A. No, Cole don't. They first turn out the plain flour, you know, and then re-mix it and make self-rising.

Q. Yes, they have a self-rising plant like these blenders have, haven't they?

A. I could not say about that. I have never seen the plants the blenders have.

Q. So, the Cole plant, self-rising plant did not look like these pictures?

A. No, it don't seem to me like it did. It was connected in with his other plant, you see. If you had it off to one side it might favor that more. I don't know about that.

Q. You do not know whether any of those mills buy flour themselves from other mills and put it out under their brands?

A. Those?

Q. The ones you have mentioned?

A. I do not know about that. You know it is beyond my knowledge.

Q. I just want to find out what your knowledge was. All right.

Redirect Examination by Mr. Bane.

Q. Did I ask you, Mr. Taylor whether you handle both self-rising and plain flour?

A. I don't remember whether you did or not.

Q. Do you?

A. Yes, sir. We do.

Q. I understood you to say that you knew or under-

stood that the Snell Milling Company was not a concern grinding the wheat into the flour but was a blender, is that correct?

A. Yes, sir.

Q. When did you get such an understanding?

A. Well, I could not say just when.

Q. Approximately last year, or—

A. Oh, possibly a year or two ago. I know Mr. Snell personally, and—

Q. How did you get that?

Mr. Malone: Let him finish. He knew him personally.

Mr. Bane: And what?

A. I have bought some flour from him. But, I do not remember ever going into a real conversation about it.

Q. How did you find out the Snell Milling Company was not a mill?

A. Well, from my experience, what I have learned, what I have heard, rather, for a number of years, that there was not but one wheat mill that manufactured wheat into flour in Nashville, and may be it was down a part of the time.

Q. What mill was that?

A. I believe they called it the old Liberty Mill. I believe that is what they call it. Of course knowing that all these concerns that call themselves milling, I knew they were not milling, if there was not but one mill in Nashville. I did not have to discuss that with them.

Q. What do your customers mean, if you know, when they use the word mill, in reference to a concern selling flour?

Mr. Malone: We went over that, Mr. Examiner.

Mr. Bane: You later went over it on cross-examination and it was confused.

Examiner Sheppard: Go ahead.

A. Well, a few times, not so often, but I remember a few times we were discussing this, and they would say, I have got the flour coming from the mill. Of course I—

Q. What did they mean, if you know, when they used the word "mill," what did they mean?

A. I do not know, except what they express it.

Q. The way they express it, what did they mean?

A. I would take it that they have flour coming from a mill who grinds wheat into the finished product.

Mr. Bane: That is all, Mr. Examiner.

WALTER CUNNINGHAM, being produced, sworn and examined, testified on behalf of the Commission:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Cunningham?
A. Nashville, Tennessee.
Q. What is your business?
A. Wholesale grocery.
Q. Individually or with a concern?
A. Robert Orr & Company.
Q. What is your position with the Robert Orr & Company?
A. I am vice president of the company.
Q. What, vice president? Where is Robert Orr & Company located?
A. On Second Avenue, this city.
Q. How long have you been with Robert Orr & Company?
A. Ten years.
Q. Do you handle flour?
A. Some, yes.
Q. Plain and self-rising, both?
A. Yes, sir.
Q. What territory does your company sell through?
A. Well, a part of middle Tennessee.
Q. Do you go down into Alabama?
A. Some, yes, sir.
Q. Georgia?
A. No, sir.
Q. Into Mississippi?
A. No, sir.
Q. Do you go into Southern Kentucky?
A. Yes, sir.
Q. Do you come in contact with your trade any, your customers?
A. Personally? No, except the ones that come into the store.
Q. You come in contact with those?
A. Just the ones that call in.
Q. I say, you come in contact with those that call in?

A. Yes, sir.

Q. From your contact with your trade, what does your trade that you come in contact with understand the word "mill," or the word "milling" when used in the name of a concern selling flour to mean, as to the character of the concern?

A. Well, I think a good many of them know which are blenders and which are mills. Some say, I really have not discussed it with them very much, but some of them are under the impression that the blenders using the mill names, are grinders of wheat.

Q. Grinders of wheat into flour?

A. Yes, sir.

Q. Have you had any discussion with any of your customers recently with reference to the mill industry in Nashville?

A. Well, no, sir. Flour is not one of our heavy items. We do not really work the flour business very hard at our place.

Q. Did you ever at any time recently have a discussion with any retail grocer or any buyer of flour, about the milling industry in the City of Nashville?

A. Well, I heard a customer who is a broker here, discussing it recently, and he remarked that Tip-Top flour was the best flour ground in Nashville.

Q. Ground in Nashville?

A. Yes, but he only buys a bag occasionally.

Q. Have you heard any other persons who buy flour, discussing the flour industry in Nashville?

A. Well, not any specific case. I have heard, numbers of times, I will say numbers of times, a few times, grocerymen, some of them under the impression that the blenders are using the mill names here, are grinders of—

Q. Wheat into flour?

A. Yes, sir.

Q. Have you heard or had any grocers, or any discussion with grocers or buyers of flour, in which they have indicated that they thought more flour was ground in Nashville than practically any other point?

A. Well, that has been in the press some. Has it or not?

Q. I don't know.

A. It has, I think.

Q. I am asking you, I do not know what has been in the press.

A. Yes, sir, they are under the impression this is a big milling center.

Walter Cunningham

Q. By milling center, that is a place where they grind wheat into flour?

A. I presume it is, yes, sir.

Q. Do you come in contact at all with the consumer, that is men who buy flour and make it up into bread of some kind?

A. No. We only sell wholesale.

Q. During the time you have been in the wholesale grocery business, all of that time you have been right here in the City of Nashville?

A. Yes, sir.

Q. With Robert Orr & Company?

A. No, I was prior to that—

Q. But in the City of Nashville?

A. Yes, sir.

Mr. Bane: All right.

Cross-examination by Mr. Malone.

Q. Mr. Cunningham, you know the Tip Top flour was produced by the Cherokee Mills?

A. Yes, I know that very well.

Q. You know the character of concern that is?

A. Yes, sir.

Q. What about the Martha White flour?

A. I know the blenders, all in Nashville. I know them all.

Q. You say the salesmen spoke of the Tip-Top as very high grade flour?

A. He just spoke of it as a consumer. He meant he used it at his own home. But, that did not change him He still thought it was good flour.

Q. Who did you buy from, that you handle?

A. We buy flour from Wagner Gates.

Q. Where are they?

A. They are at Independence, Missouri, I believe.

Q. Is that a grinder of flour?

A. Yes, sir.

Q. A grinder of wheat, I mean, into flour?

A. Yes, sir.

Q. Is not it a matter of common knowledge here in Nashville, Mr. Cunningham, that the Liberty Mills and the Colonial are the only grinders of wheat?

A. I do not know whether it is or not. I know it, of course, and I think most of the dealers in the City of Nashville know it.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

Q. How many concerns are there in the City of Nashville that grind wheat into flour?
A. I have been informed there are only two.
Q. What two are they?
A. The Liberty and Colonial.

Mr. Bane: That is all.

W. L. PRIMM, being produced, sworn and examined on the part of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Primm?
A. 320 Sylvan Street.
Q. Nashville, Tennessee.
A. Yes, sir.
Q. What is your business?
A. Grocer.
Q. Retail?
A. Yes, sir.
Q. Where is your retail grocery located?
A. 319.
Q. 319 what?
A. Sylvan.
Q. Is that conducted under the name of W. L. Primm?
A. Yes, sir.
Q. How long have you been in that business, Mr. Primm?
A. Between nine and ten years.
Q. At the same point?
A. Yes, sir.
Q. Were you in the retail grocery business anywhere else, except here at Nashville?
A. No, sir.
Q. Do you buy and sell flour?
A. Yes, sir.
Q. Plain and self-rising?
A. Yes, sir.
Q. What does the word mill or milling, Mr. Primm, when used in the name of a concern selling flour, indicate or mean to you as to the character of that concern?
A. You mean "milling"?
Q. Yes?

A. I would think they grind flour, their own flour.

Q. That is, grind the wheat into flour?

A. Yes, sir.

Q. Which do you prefer to buy flour from, if you have any preference, a concern grinding the wheat into flour and selling it, or a concern that buys flour from some one else that grinds, and mixes it up and sells it under their own name?

A. Well, I never gave that no thought, on that.

Q. You have no preference in the matter?

A. Of course, for myself, I would rather buy from the mill.

Q. Why?

A. I would think you could get better stuff in one line.

Q. You mean more uniform?

A. Yes, sir.

Q. When you say mills, do you mean the concern grinding the wheat into flour?

A. Yes, sir, that is what I said, in milling.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Any cross?

Cross-examination by Mr. Malone.

Q. Mr. Primm, who do you buy your flour from in Nashville?

A. I buy from the Ford Flour Company and Royal Milling Company.

Q. The Royal Milling Company is Mr. McGraw here?

A. Yes, sir.

Q. You have been inside of Mr. McGraw's plant?

A. Yes, sir.

Q. And you knew he was not grinding wheat?

A. Yes, sir.

Q. You are familiar with the operation?

A. Yes, sir.

Q. You bought from him with that knowledge?

A. I bought with the knowledge, I knew he didn't grind.

Q. And it was perfectly satisfactory, the flour you bought?

A. Yes, sir, the flour I bought was perfectly satisfactory. If it was not, I would not have bought it.

Mr. Malone: That is all.

PAUL GOLDBERG being produced, sworn and examined on the part of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Goldberg?
A. 901 Second Avenue South, Nashville, Tennessee.
Q. What is your business?
A. Retail grocer.
Q. How long have you been in that business, Mr. Goldberg?
A. About eighteen years.
Q. At that same address?
A. No, sir, I have been in the same address nine years.
Q. Where were you in business before?
A. At 1109 Jefferson Street.
Q. In the city of Nashville?
A. Yes, sir.
Q. Your eighteen years' experience has been in the City of Nashville?
A. Yes, sir.
Q. Is the business operated in your own name?
A. Goldberg Grocery Company.
Q. Do you handle flour?
A. Yes, sir.
Q. You buy and sell it?
A. Yes, sir.
Q. Do you sell plain and self-rising?
A. Yes, sir.
Q. What does the word "mill" or "milling," Mr. Goldberg, indicate or mean to you when used in the name of a concern selling flour?
A. The grinding or the milling, is the manufacture or making of flour.
Q. How do you make flour, by grinding wheat into flour?
A. Yes, sir.
Q. Is the same thing true with reference to "milling"?
A. No, I would not think so. Milling means grinding flour after you have milled it and mixed it. I might have a little mill of my own and mix it.
Q. What does the term "manufacturer of flour" mean, Mr. Goldberg?
A. Well, the self-rising, they manufacture their own flour.
Q. Do they manufacture the flour, or self-rising flour?
A. Self-rising flour.

Q. Do they manufacture flour?
A. I don't believe they make the flour.
Q. What does the term manufacture of flour mean?
A. I would think the grinding of it.
Q. The grinding of wheat into flour?
A. Yes, sir.
Q. Which do you prefer to buy from, Mr. Goldberg, if you have any preference, a concern—
A. Personally, I have no preference.
Q. You know what I am going to ask. You have been hearing the other witnesses, is that correct?
A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.
Mr. Malone: Stand aside, Mr. Goldberg.
Mr. Bane: Mr. Examiner, that completes the witnesses I have this morning. I have other witnesses for this afternoon, for 2:00 o'clock. So, I move you sir, we adjourn until 2:00 o'clock this afternoon.
Examiner Sheppard: All right, gentlemen, we will take an adjournment until two o'clock.

Docket No. 1601.

Nashville, Tennessee, June 28th, 1929.

Met pursuant to adjournment, 2:00 o'clock P. M.
Before:
William W. Sheppard, Examiner.

Appearances:

Mr. Bane, for the Commission.
Mr. Malone, for the Respondents.

MRS. J. B. CANFIELD, being produced, sworn and examined on the part of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Where do you live, Mrs. Canfield?
A. 2217 Bellmont Boulevard.
Q. Nashville, Tennessee?
A. Yes, sir.
Q. How long have you live in Nashville?
A. Well, I was born and raised here, lived here practically all my life.

Q. Do you make your own bread?
A. Yes, sir.
Q. And buy flour to make the bread?
A. Yes, sir.
Q. Do you buy self-rising or plain flour?
A. Plain flour.
Q. When you buy flour, Mrs. Canfield, packed in a bag on which there is the name of a concern in which name there is the word "mill" or the word "milling," what do you understand as to the character of the concern? Do you believe it is one that ground the wheat into flour, or think they buy the flour from some one else that ground it?
A. I would think that they ground it themselves.
Q. That would indicate the flour in the bag was ground from the wheat by the one whose name and address appears on the bag?
A. Yes, sir.
Q. Do you prefer, if you have any preference, do you prefer to buy from a mill that ground the wheat, or bought flour from some one else and mixed it up and then sold it?
A. I should think it would be better to buy from the mill that ground it.
Q. Why?
A. I should think it would not be adulterated, would not have a chance to be.
Q. It would be a better flour?
A. Yes, sir; I think so.
Q. Do you know, Mrs. Canfield, there was any such thing in the flouring industry as a blender?
A. No, sir.
Q. What flour, Mrs. Canfield, do you buy?
A. Several different brands.
Q. Will you tell me those, please?
A. Flora, Martha White, Gloria, and some times Polly Rich.
Q. Do you know what concern's name appears on the name of the flour Flora?
A. Ford, I think.
Q. Ford Flour Company?
A. Yes, sir, or Liberty Mills, I think, too is the name.
Q. Do you know whether or not the Liberty Mills grinds the wheat into flour?
A. No, sir.

Q. You understand they do, because of the use of the word "mill"?
A. Yes, sir.
Q. The Martha White?
A. That is by the Royal Milling Company.
Q. Do you know whether or not they grind the wheat into flour?
A. No, sir.
Q. What is your understanding?
A. I should think so.
Q. You think they do?
A. Yes, sir.
Q. Who puts up the Gloria?
A. I don't remember who puts that up, or the Polly Rich.
Q. You do not remember the name on the Polly Rich?
A. No, sir.
Q. How long have you been married, Mrs. Canfield?
A. Twenty-three years.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. All those flours you have been using were satisfactory?
A. Yes, sir.

Mr. Malone: That is all.

M. J. MULLOY, being produced, sworn and examined on behalf of the Commission, testified:

Direct Examination by Mr. Bane.

Q. Mr. Mulloy, where do you live?
A. 815 Eighth Avenue South, Nashville.
Q. What is your business?
A. Groceryman.
Q. Retail or wholesale?
A. Retail.
Q. How long have you been in that business?
A. About twenty years.
Q. Here in Nashville?
A. Yes, sir.
Q. Is that business conducted under your name, or a firm name?
A. A firm name.

Q. What is that?

A. Mulloy Brothers.

Q. Do you handle flour?

A. Yes, sir.

Q. Plain and self-rising?

A. Yes, sir.

Q. What does the word "mill," Mr. Mulloy, or the word "milling" when used in the name of a concern selling flour, indicate to you as to the character of that concern?

A. Well, of course my interpretation of it would be, would be a mill that would be grinding flour.

Q. Grinding wheat into flour?

A. Wheat, yes, sir.

Q. What would the phrase, "manufacturer of flour" indicate to you or mean to you as to the nature of the concern?

A. Of course I am only giving you my interpretation of it.

Q. Yes.

A. My interpretation of it would be a concern that bought flour and re-packed it and blended it.

Q. You think the phrase "manufacturer of flour" would indicate a difference?

A. Well, no. No, I am wrong, I spoke too quick. Manufacture my interpretation would be, that would be a grinder of wheat.

Q. Of wheat into flour?

A. Yes, sir.

Q. Do you prefer, or do you have any preference, Mr. Mulloy, as to whether or not you shall buy from a concern that grinds the wheat into flour, as compared with one that buys the flour from some other concern that grinds it and mixes it up, packs it and sells it?

A. Well, I will answer that question in this way, we had mills here that ground their wheat, and we bought flour from them, and at one time we had a great deal of trouble with not getting a standard run of flour, that is, we had complaints on the flour. We would get a good run of flour and then we would get a bad run of flour, and we found that, what is called the blenders, our experience was that they paid more attention, and knew positively more about what their flour was, as it went out, they paid particular attention to that.

Q. What concern was that that you had the experience with?

A. That was the Liberty Mills.

Q. The Liberty Mills?

A. Yes, sir.

Q. Have you used any Liberty Mills flour recently?

A. Not for some time.

Q. Well, you still have not quite answered my question, unless you consider that explanation an answer. I would prefer a positive answer, which concern do you prefer to deal with?

A. I would prefer to deal—I speak for us in Nashville and the firm with which I am connected.

Q. You are talking for yourself and firm only.

A. Yes. We would prefer to buy flour from blenders of flour. I can testify and give the names.

Q. Can you give me the names of the blenders from which you buy?

A. Yes, sir, the Nashville Roller Mills, the Martha White, I forget the name.

Q. I won't ask for brands, just the names of the concerns.

A. I just forget the name of the people that the Martha White is made by.

Q. Royal?

A. Yes, sir; Royal Milling Company, Nashville Roller Mill, and the United Milling Company.

Q. The United Milling Company?

A. United Flour Milling Company?

Q. What is the name you buy it under?

A. Yes, I just forget, it is Mr. McCarthy's mill.

Q. What is it, Mr. McCarthy?

Mr. McCarthy: United Flour Company.

A. United Flour Company and Cherokee Mills and the Tennessee Grain Company.

Q. Are those the only ones you buy from?

A. Yes, sir.

Q. Do you buy from any others?

A. No, sir.

Q. Do you handle any other flours than the flours you buy from those concerns?

A. No, sir.

Mr. Bane: That is all, Mr. Examiner.

Mr. Malone: No cross-examination.

C. S. RAGLAND, being produced, sworn and examined on the part of the Commission, testified:

C. S. Ragland

Direct Examination by Mr. Bane.

Q. Where do you live, Mr. Ragland?
A. Nashville.
Q. What is your business?
A. Wholesale Grocer.
Q. Individually or with a concern?
A. A corporation.
Q. What is the name of the corporation?
A. C. B. Ragland Company.
Q. How long have you been with that concern, Mr. Ragland?
A. Since its organization in 1919.
Q. Where is the concern located?
A. 300 Second Avenue South.
Q. How long have you been at that location?
A. About a year and a half.
Q. Prior to that time where were you located?
A. 154 Second Avenue South.
Q. How long has it been a Nashville concern?
A. Since 1921.
Q. Were you in the wholesale business prior to that time?
A. No, sir. I was not.
Q. Was the concern in business prior to that time?
A. The main stockholder was.
Q. Where?
A. Murfreesboro, and other places in Middle Tennessee.
Q. Were you with the concern in Murfreesboro?
A. No, sir, I worked there for a few months with them in 1919.
Q. Where?
A. In Murfreesboro.
Q. Did you work with them anywhere else before you came to Nashville?
A. At Watertown.
Q. At Watertown?
A. Yes, sir.
Q. How long?
A. About two years.
Q. You moved from Watertown here?
A. No, they organized another branch here, the main office here.
Q. Then you came with this office here?
A. Yes, sir.
Q. Does your concern handle flour?

A. Yes, sir.

Q. Plain and self-rising?

A. Yes, sir.

Q. Did you handle that in Watertown?

A. Yes, sir.

Q. What does the word "mill" or the word "milling," Mr. Ragland, when used in the name of a concern offering to sell flour, indicate to you the character of that concern to be?

A. It means that they grind wheat, unless I know they are blenders.

Q. It means to grind wheat into flour?

A. Unless I know specifically.

Q. I say, it means to grind wheat into flour, unless you specifically know that they do not grind?

A. Yes, sir.

Q. But, you being in Nashville, of course know there are some concerns in Nashville using such names that do not grind wheat into flour, is that correct?

A. Yes, sir.

Q. What does the term or phrase "manufacturer of flour" mean to you?

A. It means, in case of wheat, grinding wheat into flour.

Q. Do you come in contact with the retail trade, Mr. Ragland?

A. Yes, sir.

Q. From your experience with the retail trade, what does your trade understand those words, when used in the name of a concern selling flour, to indicate as to the character of the concern?

A. I think they mainly think like I think, it means grinding wheat, unless they know they are buying from a blender.

Q. Unless they are specifically told before?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Which do you prefer to buy flour from, Mr. Ragland, a concern actually grinding wheat into flour which it sells, or a concern that buys flour from others who grind it, mixes it and sells under its own name?

A. My present preference is the mill that actually grinds the wheat into flour.

Q. Why?

A. Because I formerly preferred to buy from the blender, but I found out I can sell more flour by buying from the miller who grinds the wheat into flour.

C. S. Ragland

Q. If you know, why is it you can sell more flour?

A. I would not say exactly why I do sell more. I will say I can make more profit out of buying from the latter.

Q. From the mill?

A. Because I sell more, yes. My experience is only limited to nine months in the case of the latter, and about five years in the case of the former.

Q. In the case of the former, meaning by that the blender?

A. The blender, yes, sir.

Q. Why, if you know, do you sell more, can you sell more of the flour coming from the miller grinding it?

A. Well, we have been able to convince a greater number of customers that we are giving them just good value, just have been able to sell them on the quality of the product from the miller than in the case when we were buying from the blender.

Q. Do you know whether or not your customers prefer a flour packed and coming direct from the mill that grinds it, as compared to one who buys flour from concerns that grind it and mixes it together and sell it? Do you understand the question?

A. Yes, I understand the question.

Q. From observation in the City of Nashville what do you find?

A. We find that they prefer to buy it direct from the blenders who deliver to them at the store direct.

Q. Outside of the City of Nashville, what do you find the customers prefer?

A. In the small country towns, the small man prefers to buy from the jobber and the larger dealer prefers and mostly does buy from the blender.

Q. The smaller dealer prefers to buy from the Mill that has ground and packed the flour.

Mr. Malone: He said the jobber.
(The preceding answer was then read.)

Q. That does not answer my question.

A. I cannot answer your question. I do not know who the other jobbers buy from, whether from blenders or millers.

Q. I am asking from your experience, do you find your customers prefer to buy flour packed by the miller that grinds the wheat into flour, or buy flour from some one else who grinds the flour and mixes and packs the flour and sells it?

A. I do not think our customers care. All they want is the value.

Q. A profit on the flour?

A. They want the value.

Q. Where do you sell?

A. In Middle Tennessee, southern Kentucky and Northern Alabama.

Q. Now, you spoke of buying flour from a blender for a period of five years, is that true?

A. Yes, sir.

Q. What blender is that?

A. Cherokee Mills.

Q. When did you begin buying from them?

A. I think about nineteen—when we first opened up, approximately 1921.

Q. Do you remember at the time you first bought from them, did you know that was a blender and not a concern grinding wheat into flour?

A. Yes, sir.

Q. Did you buy from them when you were at Watertown?

A. We bought in Nashville, yes, sir.

Q. From what concern did you buy?

A. The Cherokee Mills in Nashville.

Q. When you were at Watertown?

A. Nashville, principally, the Cherokee Mills and also bought from the Dunlop Mills for Watertown.

Q. You bought from the Cherokee Mills in Nashville?

A. Yes, sir, from the Cherokee Mills in Nashville.

Q. Did you know when you were buying from the Cherokee Mills at Watertown, that it did not grind the wheat into flour?

A. Yes, sir.

Q. You knew that in Watertown when you began buying from the Cherokee Mills?

A. Yes, sir; we knew they were blenders when we first began buying.

Q. In Watertown?

A. In Watertown.

Mr. Bane: That is all, Mr. Examiner.

Cross-examination by Mr. Malone.

Q. Mr. Ragland, the Cherokee Mills to some extent compete with you?

A. Yes, sir.

Q. And you can make more profit, as you stated on

direct examination, buying from mills, brands that do not compete, that is correct.

A. We do not buy brands, we buy flour.

Q. You buy flour packed, but you can make more profit in that way, by handling from the mills?

A. Sure, in volume of profit, that has been our experience, yes.

Q. And that was, of course, the reason you quit with the Cherokee and undertook to handle your own business under your own brands, packed in that way, because you could do better on the flour, is that correct?

A. Yes, because we thought we could do better.

Mr. Malone: That is all.

Examiner Sheppard: Does the mill pack for you?

A. Yes, sir.

Q. What mill is that, Mr. Ragland, I did not catch that, that packs for you?

A. The mill that packed our present stock is the Sunny Side Milling Company of Evansville, Indiana, the stock we have on the floor.

Examiner Sheppard: That is a general custom of wholesale grocers, to have their flour put up by somebody?

A. I think.

Examiner Sheppard: I mean when they sell under their own brand?

A. Yes, sir.

Redirect Examination by Mr. Bane.

Q. Some wholesale grocers do pack under their own brands, sometimes, don't they?

A. Some sell the mill brands.

Q. Do you mean by that, that the flour you sell is packed under your brand by the Sunnyside Mill?

A. Yes, sir.

Q. Whose name appears on the sack?

A. Our name.

Q. Does any other name appear on the sack?

A. No, sir.

Q. Sunny Side does not?

A. No, sir.

Q. How does your name appear on there?
A. "Milled for C. B. Ragland Company, Nashville, Tennessee."
Q. "Milled for"?
A. Yes, sir.

Mr. Bane: That is all.
Mr. Malone: Nothing further.

Mr. Bane: Mr. Examiner, that completes the Commission's case, with the exception of one witness. I had three witnesses I expected to have today, of the same nature and kind as those previously put on the stand today, two of those witnesses I have been unable to get today, but I would like to put on the stand at a later date. I have another witness of a different kind and character, that has been away and I am unable to reach. I don't think it will take long to reach. With the understanding that when the respondent puts in its case I may have the right to put on this, the Commission rests.

Mr. Malone: That will be entirely agreeable, Mr. Examiner.

Examiner Sheppard: All right, gentleman. Before I take into consideration the setting of another date for resuming this case, Mr. Malone, I want to hear from you as to your lay-out and suggestions you may make, your motion, Mr. Malone.

Mr. Malone: Mr. Examiner, I had hoped to be able to proceed with this case, but on account of personal engagements which have been explained to yourself and to Mr. Bane, it will be impossible for me to go on with this case next week. And, I find on consulting with my clients, that there are several material witnesses, one, especially, in California, who would not be available here by the 10th or 11th of July, when it was hoped we could adjourn to, and I therefore move that the hearing be adjourned until some time in September, or after July, whenever the examiner and counsel can take it up.

Examiner Sheppard: Is that satisfactory?

Mr. Bane: I would much prefer, Mr. Examiner, as I said, to go on with the case within a reasonable time after the Commission's case has been rested. But, if it is impossible for Mr. Malone to go on with the case, because of other engagements he has, and because he cannot get witnesses he considers vital to his side of the case, I do not see anything else, but to adjourn so he can meet the engagements. I understand you have engagements from

the 20th of July on so if we can not have it at the time, it must go over to meet your convenience.

Examiner Sheppard: Gentleman, I know it is the purpose of the Commission, and my purpose, to give the respondents every opportunity to prepare his case, and present it, and if the respondent has a witness in California or other places, that it is unable to obtain their attendance at court, I would not desire to force them to trial without them. As you gentlemen both know, I have an engagement that will consume, I believe at this present moment the entire month of August, and so I am going to continue further consideration and hearing in this case until early September for the present, if my arrangements stand. If I do find that some time in August we can get to this case again, I will give you five days notice.

Mr. Bane: You will fix it after consulting both.

Examiner Sheppard: Exactly. I will not set it without an agreement with both, and I won't set a definite date now, because it is a long way off. We do not know what contingencies may arise. But, I will take up with you and Mr. Bane, and get a date as early in September as is possible.

STIPULATION.

It is stipulated with respect to the letter of July 11th, 1924, signed by J. B. McLemore, Secretary, and introduced as Respondent's Exhibit No. 5, on June 27th, 1929.

That said exhibit be withdrawn from the file, and the following stipulation as to its contents, so far as are relevant in this investigation be substituted therefor:

That in said letter the following questions which had arisen, are discussed: (1) Whether or not it was necessary for a mill to use or see that the words "manufactured for," or "distributed by," were placed on private brands. (2) Whether or not it was necessary for a mill buying flour from another mill, re-conditioning it and converting it into their plain or self-rising flour, to use the qualifying term. In connection with which questions, the following paragraph appears:

"The matter came up again for discussion at the meeting of the Southeastern Millers Association on June 24th, and I was asked to submit certain questions to the Bureau of Chemistry for answer. It seems that many of our mills had been violating this regulation and we are anxious to get in the clear. I therefore submitted to the Bureau of Chemistry three propositions."

Prior to the language above quoted, Mr. McLemore in

speaking of a certain mill said it had sold flour to jobbers under the jobbers' private brands, and shipped these brands in Interstate Commerce, without showing on the packages "manufactured for," or "distributed by."

It is understood that this stipulation is made subject to the objection made by counsel for the Commission to the original exhibit.

(The hearing thereupon at 3:00 P. M. o'clock, June 28th, 1929, adjourned without date.)

BEFORE THE FEDERAL TRADE COMMISSION.

In the matter of Francis J. McCarthy, doing business under the name of Wautauga Milling Company, Modern Milling Company, F. J. McCarthy Milling Company, Southern Flour Mills Company, and Star Mills.	Docket No. 1601

Nashville, Tennessee, January 10, 1930.

Met pursuant to notice, 10:00 o'clock A. M.

Before:

William W. Sheppard, Examiner.

Appearances:

Baldwin B. Bane, (Washington, D. C.) for the Federal Trade Commission.

Thomas H. Malone, Jr., (Nashville, Tennessee) Attorney for Respondent.

PROCEEDINGS.

Examiner Sheppard: Gentlemen, we will come to order.

Mr. Reporter, the last hearing in this case was on June 28th, 1929. At that time I set no date for the resumption of the trial of this case, but gave notice to the attorneys that it would be convened on five days notice. Some weeks ago I appointed to-day for resuming the trial of this case, and it is convened and ready for trial.

Mr. Bane, I believe you had not closed your side of the case when you ended the hearing in June?

Mr. Bane: That is right.

Examiner Sheppard: And if you have anything else to present, now is your opportunity.

Mr. Bane: I will ask Mr. Drake to take the stand.

R. H. DRAKE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct Examination by Mr. Bane.

Q. 1. Where do you live, Mr. Drake, please?

A. Memphis, Tennessee.

Q. 2. What is your business?

A. I am manager of the Indiana Flour Company there.

Q. 3. How long have you been manager of the Indiana Flour Company?

A. Since July, 1927.

Q. 4. Was that the time the Company was organized?

A. Yes, sir.

Q. 5. You have been manager of it, ever since it was organized?

A. Yes, sir.

Q. 6. Were you connected with or in the flour business prior to that time?

A. Yes, I was salesman for Inglehardt Brothers of Evansville.

Q. 7. Evansville, Indiana?

A. Yes, sir.

Q. 8. How long had you been salesman for Inglehardt Brothers?

A. I had been with them since about 1921 or 1922. Well I had been on the road for the company about three years, I guess, prior to going to Memphis.

Q. 9. Prior to going to Memphis?

A. Yes, sir.

Q. 10. What is the business of the Indiana Flour Company?

A. We are distributors for the State of Mississippi, and a small portion of West Tennessee, for flour packed under the brands of Inglehardt Brothers, and another mill that they own, known as the Phoenix Flour Mill.

Q. 11. Does the Indiana Flour Company pack flour?

A. Yes, sir; we pack from large containers into the sizes of trade buys, twelves twenty-fours, etc.

Q. 12. And do you blend flour?

A. Well, in our particular case, there is no blending. We use, in Memphis there, all the flour that we use is bought, or rather shipped from our home office and home mills, and we use their grades. They have set grades for their brands, and there is no blending required on my part at Memphis.

Q. 13. For those brands?

A. That is right.

Q. 14. You simply re-pack them?

A. That is all.

Q. 15. Do you re-bolt or sift it before you re-pack it?

A. Yes, sir; we run it through what is known as a mixer.

Q. 16. You run it through what is known as a mixer?

A. Yes, sir. And the large containers we get the flour in, sometimes it accumulates even in dumping it from the sacks, we may get strings, something like that from the top of the sack, and of course we have to be careful to take out those strings, etc.

Q. 17. After you get it, you run it through a mixer, and also run it through a reel or bolting machine?

A. That is right.

Q. 18. Sifting it again?

A. Yes, sir.

Q. 19. Then you pack it?

A. Yes, sir.

Q. 20. Do you prepare at this plant, a self-rising flour?

A. Yes, sir.

Q. 21. How do you prepare that self-rising flour?

A. Well, I use a formula furnished me by the mills, so many pounds of ingredients of each kind.

Q. 22. And so many pounds of flour?

A. So many pounds of flour, together, to be a certain mixture, as required by the mill.

Q. 23. Then you keep it in the mixer a certain length of time?

A. Yes, sir.

Q. 24. Then you run it out of the mixer into the bins?

A. And into the packer.

Q. 25. Don't you run it over the bolting machine?

A. Yes, we run it through the reel, the same process as with the plain flour.

Q. 26. You run it through the mixer and then have it carried up the elevator from the mixer to the reels?

A. To the reels.

Q. 27. And then through the reels?

A. Yes, sir.

Q. 28. And from the reels into the packer?

A. Yes, sir.

Q. 29. And packed into the size bags as you want it?

A. Yes, sir.

Q. 30. And that is the way you prepare self-rising flour?

A. That is right.

Q. 31. So, you prepare and sell plain and self-rising flour?

A. That is correct.

Q. 32. As manager of the company, what are your duties?

A. Well, I have to supervise the operations of the mill there, of the plant and look after the sales, look after the collections.

Q. 33. You have general supervision of the plant?

A. Yes, I have charge of the plant.

Q. 34. Of the business?

A. Correct.

Q. 35. You come in contact with and have association with the buyers, those to whom the flour is sold, that is, the merchants, do you?

A. Yes, sir.

Q. 36. From your contact and association with the buyers, what does the word "Mill," or the word "milling," when used in the name of a concern selling flour, indicate to the buyer as to the character of that concern? Is that question clear?

A. Yes, sir; the question is clear. It depends entirely on the buyer. I could not place myself in the same mind that every buyer is in.

Q. 37. No, but from the buyers you have come in contact with, from the buyers you have come in contact with and from your experience with the buyers, as to the character of the concern, what does the word "mill" or the word "milling" when used in the name of a concern selling flour, indicate as to the character of that concern?

A. The word "milling," or "mill," I would say would mean a manufacturer, means or indicates the flour —would mean the manufacture of flour from the raw product.

Q. 38. That is, from the wheat, you mean?

A. Well, yes, from wheat.

Q. 39. One who grinds the wheat into flour?

A. That is right.

Q. 40. Why was it that you did not use the word "mill" or the word "milling" in the name of your company, when it was established?

A. Why when the name of my company was established, I did not have anything to do with the final decision in regard to the name. I am not a stockholder of the company. Of course my little plant there in Memphis is owned by a large corporation. The name, of course, was

decided on by the officials of the company, who named it the Indiana Flour Company, to indicate that we were distributors of flour. That was the idea of course in naming it the Indiana Flour Company. Why the name Indiana was decided on, I do not know.

Q. 41. Was the question discussed, as to whether that should be called some kind of a "mill" or "milling company"?

A. No, there was not any discussion about it at all. We did not consider that we were a mill, and we did not name it a mill. There was not any discussion necessary.

Q. 42. In other words, you did not think you were a mill or a milling company, and therefore you did not use the word?

A. We knew we were not.

Q. 43. And therefore, you did not use the word?

A. No, we used the word "flour"—flour company.

Q. 44. In the preparation, Mr. Drake, of self-rising flour, do you blend the flour as you prepare it, or in the flour in any way ground, in a grinding process?

A. No, sir.

Q. 45. Is the quality or the grade of the flour in any way changed?

A. No, I would not say so. It is not changed any more than when you take plain flour, take it home and prepare it for baking?

Q. 46. No more than it is changed by the ordinary cook in the kitchen, who adds—

A. Practically the same thing.

Q. 47. (Continuing)—baking powder, etc.?

A. Practically the same thing.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Mr. Malone, you may ask him.

Cross-examination by Mr. Malone.

X. 1. Mr. Drake, your plant is just a sort of adjunct to Inglehardt Brothers?

A. That is correct, yes, sir.

X. 2. And Inglehardt Brothers run a grinding mill, a wheat grinding mill?

A. Yes, sir.

X. 3. They are members of the Southeastern Millers' Association.

A. Mr. Malone, they were when I left Evansville some years ago. Whether they are members now or not, I do not know. I cannot say.

X. 4. Now, you say as to what a buyer understands by the use of the word "mill" in a concern's name, depends on the buyer?

A. I think it depends on the buyer's attitude, and the buyer's mind.

X. 5. And the buyer's knowledge, don't it?

A. They are all not alike.

X. 6. Yes. Is not it well known, among many merchants at least, that the Nashville manufacturers of self-rising flour use the words "mills" but have not got any grinding of wheat, is not that correct?

A. I think it is, yes, sir.

X. 7. And what does a buyer want, Mr. Drake?

A. He wants a price.

X. 8. He wants service and a fair price, and an article that suits his trade, don't he?

A. Well, what they really want, Mr. Malone is an Eight Dollar flour at Six and a half, that is what they really want.

X. 9. That is, price is the chief thing they are looking for?

A. Well, quality, of course has got to be considered. A flour buyer usually wants something that he can buy regular, something he can build the trade on, and something he can hold the trade on.

X. 10. Exactly, it has got to suit his trade?

A. That is right.

X. 11. And, so the elements usually are, the price—that is the first thing, he has got to see what he can afford to pay for it?

A. That is usually the first talking point.

X. 12. The price is usually the first talking point?

A. Yes, sir.

X. 13. And of a quality that suits his trade, and the service he gets.

A. Yes, sir, those are the three essentials.

X. 14. Those are the three essentials?

A. Yes, sir.

X. 15. And that is what the buying is done on, of course?

A. Yes, sir, correct.

X. 16. Do you get a milling in transit privilege on your flour down there in Memphis?

A. In car load shipments out of Memphis into the State of Mississippi, it is the only place—well I do ship some flour into Arkansas. We get what is known as a re-shipping rate, and in order to secure that, we have to

turn in the amount of in-bound tonnage covering the amount of out-bound tonnage.

X. 17. So, what do you turn in now, inbound flour bills against out-bound flour bills?

A. Yes, we have to turn in flour bills against flour shipments.

X. 18. Are you sure that is a car load proposition, you have not any "any quantity" rates down there?

A. You see, I only ship to the southwest. The southeastern tariff out of Memphis, I understand, provides for shipments in amounts of 125 barrels, or 24,000 pounds, but as I do not ship to the southeast, I do not use that privilege.

X. 19. Mr. Drake, you mix the ingredients in making self-rising flour?

A. Yes, sir.

X. 20. You mix it on a certain basis, so that you get a uniform product every time, don't you?

A. Yes, that is right.

X. 21. Now, you start out with flour and salt and phosphates, phosphate acid and salt, and that is mixed in certain proportions with flour?

A. Yes, sir; that is right.

X. 22. You get an article which is different from anything that went in there, don't you?

A. Yes, sir.

X. 23. Now, that is up to the Examiner and up to the Commission to say whether that is manufacturing, or remanufacturing or what it is, but that is what you do, isn't it?

A. That is what you bring out on your packers, is different from plain flour that you dump in.

X. 24. Exactly?

A. Yes, sir.

X. 25. Have you had any experience in making self-rising flour in a grinding mill, that is, Inglehardt's Brother's grinding mill?

A. No, sir, I never had anything to do with the actual operations when I was in Evansville. I was in the office, and the only experience I had there in the mill, was just passing through the mill during the day, something like that. I never did actually work in the mill.

X. 26. I was going to ask whether it was possible for the miller to just dump it all into the conveyor at one time and make self-rising flour, but that is not in your personal knowledge I take it, as to whether you can do that or not?

Mr. Bane: He said he did not know.

X. 27. You do not know anything about that?
A. Ask that question again.

Examiner Sheppard: Read the question.
(Cross-question 26 was then read to the witness.)

A. As I understand the matter, to take plain flour and take the ingredients—

X. 28. You did not get the question. What I mean, was, can you take wheat berries and salt and soda and phosphate, the leavening ingredients and mix them all up together and make a self-rising flour as an original operation?

A. No, sir.

X. 29. You know that cannot be done?
A. Well, I do not think it can be done.

Redirect Examination by Mr. Bane.

RD. 1. You said, I believe, after the flour and these ingredients are put through the process for preparing the self-rising flour, that you had a different product?

A. I understood your question awhile ago in that regard to ask me if the quality of the flour had been changed. Is not that the question you asked?

RD. 2. That is right. You said it had not?

A. I said the quality of the flour had not been change, but plain flour is not self-rising flour.

RD. 3. That is right.

A. Self-rising flour is not plain flour.

RD. 4. Now, right there. You said, if I understood you correctly, in reply to Mr. Malone, after you put the flour through the self-rising process, you had a different product. How does that product differ? What difference is there in the product?

A. It differs in the fact that for consumption, for instance, you require—it does not require certain ingredients, etc., that you have to have if you use plain flour for the house-wife who is cooking.

RD. 5. That is in making bread?

A. Yes, sir.

RD. 6. It differs only, if I understand you correctly, in that it has added to it certain elements which makes it unnecessary for the housewife to add those elements at the time she does the baking?

A. That is right.

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RD. 7. It is only in that that it differs, the leavening agents are added to it. It is the flour with the leavening agents, is that right?

A. Yes, sir.

Mr. Bane: That is all.

Recross-examination by Mr. Malone.

RX. 1. Do you know whether you can eat raw flour, is that a food article, that is, just the flour with nothing else in it?

A. I would not think it would be very palatable or very digestible. I suppose you could eat it.

RX. 2. I suppose our Hebrew friends might eat it on Passover or something of that kind, but it would not be an ordinary article of food?

A. I would not think so.

RX. 3. It would make a good paste, but not a very good food?

A. That is right.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

RD. 1. Plain flour will make unleavened bread, won't it, Mr. Drake?

A. You mean just take a plain flour—what are you going to do, mix it with water or what?

RD. 2. Well, how do you make unleavened bread?

A. I never made any.

RD. 3. Do you add anything to the plain flour to make an unleavened bread?

A. I do not know anything about unleavened bread.

RD. 4. There is such a thing as unleavened bread, is there not?

A. I have heard of it, yes. I do not know that I ever saw any.

RD. 5. But you do know there is such a thing as unleavened bread?

A. Yes, sir; I have heard of it, unleavened bread, heard it spoken of.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Just a question in my own behalf: Where is the Indiana Flour Company located?

A. Memphis, Tennessee.

Examiner Sheppard: In your experience, have you had any knowledge of the time necessary to grind grain into flour?

A. No, sir.

Examiner Sheppard: How long is that process?

A. I do not know, sir.

Examiner Sheppard: You do not know that?

A. I don't. I never had any actual experience in grinding.

Examiner Sheppard: I want some witness to testify to that, Mr. Bane. I want to find out the element of time between the process of manufacture of grain into flour, as compared with the time necessary to manufacture self-rising flour.

Mr. Drake, that will be all for you.

Witness excused.

ROY WOODALL was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Bane.

Q. 1. Where do you live, please, Mr. Woodall?

A. Memphis, Tennessee.

Q. 2. What is your business?

A. With the Dixie Portland Flour Company.

Q. 3. What is your position with the Dixie Portland Flour Company?

A. Secretary.

Q. 4. How long have you been Secretary of the Dixie Portland Flour Company?

A. About five years, four or five.

Q. 5. Where is the Dixie Portland Flour Company located?

A. You mean, what part of Memphis?

Q. 6. Where it is located, in Memphis, is it?

A. Memphis, Tennessee.

Q. 7. What is the business of the Dixie Portland Flour Company?

A. Flour blenders.

Q. 8. Flour blenders?

A. Yes, sir.

Q. 9. What are your duties as Secretary of the Company, Mr. Woodall?

A. Well, my duties cover mostly the blending of the flour to see that it is uniform, and I handle the biggest part of the correspondence that passes through the office, and handle—I am in touch with the salesmen and some of the trade in that way.

Q. 10. With the trade and the salesmen. Where does the Dixie Portland Flour Company sell its product?

A. Oh, they cover the entire south, practically.

Q. 11. Sell throughout the southeastern territory?

A. Yes, sir; throughout the southeast.

Q. 12. How is the flour blended in your plant, Mr. Woodall, will you just tell us the steps of blending?

A. It is blended in ten-barrel mixers, ten barrels at a time.

Q. 13. Yes, and then it runs from the mixers, where to?

A. It runs from the mixers to the elevators, and the elevators carry it to the reels, which is the same as sifters, and from the sifters it is dropped down into the packers, where it is packed.

Q. 14. How long is it kept in the mixer?

A. Well, from ten to fifteen minutes, usually.

Q. 15. How long does the whole operation take?

A. Well, taking ten barrels at a time, it would take about, oh, I should say thirty to forty minutes.

Q. 16. Thirty to forty minutes?

A. No, it would not hardly take that long, about twenty minutes, I believe, will cover it.

Q. 17. I will take about twenty minutes?

A. I believe that will cover it.

Q. 18. Do you make and sell both plain and self-rising flour?

A. Yes, sir.

Q. 19. That is, you blend and sell both plain and self-rising flour?

A. That is right.

Q. 20. Is your self-rising flour prepared in the same machinery and in the same way as you told us about the blended flour?

A. In the same way.

Q. 21. And in the same machinery?

A. The same machinery.

Q. 22. Except that you add—

A. The baking powder.

Q. 23. You add the baking power, that is, the self-rising ingredient?

A. That is right.

Q. 24. Is there any grinding process in this operation of blending the flour, the self-rising flour, is it in any way ground?

A. No. No more than it gets in an ordinary mixer.

Q. 25. Do you come in contact, Mr. Woodall, in any way with the buyers of the flour, those to whom the flour is sold?

A. Somewhat.

Q. 26. From your contact and experience with those buyers, what does the buyer understand as to the character of the concern selling flour when that concern has in its name the word "mill" or the word "milling"?

A. Well, I should think he would interpret that to mean the actual grinding of the wheat into flour.

Q. 27. The actual grinding of the wheat into the flour?

A. Yes, sir.

Q. 28. When was the Dixie Portland Flour Company organized, about five years ago?

A. No, it has been longer than that, about nine or ten years.

Q. 29. Have you been with it since its organization?

A. Yes, sir.

Q. 30. What was your position prior to becoming secretary?

A. I was superintendent of the mill, of the blending plant.

Q. 31. Superintendent of the blending plant?

A. Yes, sir.

Q. 32. Why did you adopt the name Dixie Portland Flour Company, and not call it the Dixie Portland Flour Mills, or the Dixie Portland Milling Company?

A. Naturally in my position I had very little to say about that, but I should think they would consider it illegal to do so.

Q. 33. Consider it what?

Mr. Malone: What is that answer?

A. Consider it illegal to use any thing but the name of the flour company.

Q. 34. Why?

A. Well, I don't know, unless they did not actually convert the wheat into flour.

Q. 35. And therefore, they did not think they were a milling concern or a mill?

A. Now, that would be my opinion. Of course, as I said I was not in position to have anything to say about that at the time.

Q. 36. You were not?

A. No, sir.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Cross-examine.

Cross-examination by Mr. Malone:

X. 1. Mr. Woodall, what sort of concern, what large concern owns your plant?

A. The Dixie Portland Flour Company owns the plant I am at.

X. 2. Are not you controlled by some other mill?

A. Mr. C. B. Stout is President of the Dixie Portland Flour Company, and he is also president of one or two mills.

X. 3. Which mills is he the president of?

A. Am I forced to answer that?

Examiner Sheppard: Not if it is a trade secret with you.

Mr. Bane: Frankly I do not see—

A. I do not think I should answer that, Mr.—

X. 4. Well, I think it is a very relevant question to show whether you are a mere adjunct of a grinding mill, controlled and operated by the policy of a grinding mill, or whether you are just a genuine, independent blender. That is the purpose of my question Mr. Examiner.

A. I do not think so, because I would be answering a question for Mr. Stout and I do not know what his idea would be about it.

Mr. Bane: May I say, Mr. Examiner, as the one who put the witness on the stand, that I do not think Mr. Woodall thoroughly understands the question. I do not see how the mills that Mr. Stout is president of, could be a trade secret. It is certainly generally known that Mr. Stout is president, and his name is published as president of certain mills. I do not think the witness understands the question. I do not imagine that Mr. Stout keeps the fact that he is president of certain mills a secret. It is generally known to other persons, and if the witness knows of

the mills Mr. Stout is president of, I do not think he is giving away anything to answer. I do not think he understood the question.

Examiner Sheppard: Yes.

X. 5. Well, just answer the question or not, as you want to, Mr. Woodall.

Mr. Bane: If he knows.

Mr. Malone: Just read the question.

(Cross-questions 3, 4 and 5 and answers thereto were then read to the witness.)

Examiner Sheppard: Mr. Woodall, if you know any of the mills Mr. Stout is president of, if Mr. Malone wants it, give it to us. If you do not know, say so.

A. The Higginsville Flour Mill and the Washington Flour Mill.

X. 6. Where are they located?

A. At Higginsville, Missouri, and Washington, Missouri.

X. 7. They are soft wheat manufacturers?

A. Yes, sir.

X. 8. Competing in the southeastern territory?

A. Well, the Dixie Portland Flour Company has the business in the southeastern territory.

X. 9. Exactly, as their representative for the southeastern territory?

A. I do not say represent these mills, exactly, no?

X. 10. But there is a connection, of course, between them?

A. Naturally, the same president.

X. 11. Well, that is that. Do you buy the flour you use in self-rising flour, all together from Mr. Stout's mills, is that what you mean?

A. Not all together.

X. 12. Sometimes you can get a better price from the Pillsburry mills or some other mill?

A. Well, that could enter into it.

X. 13. And it does enter into it, of course. You want to get your flour as low as possible?

A. Naturally that is what we are in business for.

X. 14. Yes, you have to do that in order to compete with the others in this territory?

A. Yes, sir.

X. 15. Has your concern packed any flour for Iglehardt Brothers?

Mr. Bane: Objected to, Mr. Examiner.

Mr. Malone: Just a minute, let me finish the question.

Mr. Bane: I thought you had.

X. 16. (Continuing) and shipped it out under Iglehardt's brands for their account?

Mr. Bane: Objected to, Mr. Examiner, as irrelevant, immaterial and outside of the scope of the direct examination. The fact that he may have packed flour for Iglehardt grinding mill and shipped it out has nothing to do with the charges.

Examiner Sheppard: Read the question.

(Cross-questions 15 and 16 were then read.)

Examiner Sheppard: How is that relevant?

Mr. Malone: The purpose is this, Mr. Examiner, one of the defenses set up in our answer is that this is not a matter of public interest which has been brought to the attention of the Federal Trade Commission, but is, in effect, a contest between two different interests for business, the mills on the one hand, the grinding mills, and the so-called blenders on the other. They are the people we are competing with, that is, the so-called blenders and the so-called grinding mills are competing against each other for the same business in the same territory. Now, it is our contention, and we have the authority which will be produced at the proper time for it, that if "A" is using against me, "B," exactly the same commercial usage that I am using against him, then the Commission should not undertake, and cannot undertake to protect one of us against the other. And we have already shown, and we are going to show by the production of original invoices and otherwise that it is a widely prevalent practice among mills operating in this same territory, grinding mills, to buy flour from other mills and put it out under their own brands in interstate commerce, just exactly in the manner the blenders do.

Examiner Sheppard: Mr. Reporter, I am going to support the objection to the question. Mr. Malone, it seems to me from your statement that is one of your major defenses, but should be put in by your side of the case, and as it is not direct examination, I will bar it at this time.

Mr. Malone: Yes, sir.

X. 17. How does the Census Bureau, the United States Census bureau class your plant for you?

A. How is that?

X. 18. How does the United States Census Bureau classify your plant, as a remanufacturer or what?

Mr. Bane: Objected to as irrelevant and immaterial.

Examiner Sheppard: If he knows, I will let him answer.

A. I suppose they class us as blenders.

X. 19. Don't they classify you as a remanufacturer?

A. I am not sure about that.

Mr. Malone: All right.

Witness excused.

L. D. WHITING was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Bane.

Q. 1. Where do you live, please, Mr. Whiting?

A. Louisville, Kentucky.

Q. 2. What is your business?

A. My business is cereal chemist.

Q. 3. With a concern, or individually?

A. For Ballard & Ballard Company.

Q. 4. Where is Ballard & Ballard Company located?

A. Louisville, Kentucky.

Q. 5. What is the business of Ballard & Ballard Company?

A. Flour millers.

Q. 6. Do they grind the wheat into flour?

A. Sir?

Q. 7. By that, do you mean they grind the wheat into flour?

A. Yes, sir.

Q. 8. Does Ballard & Ballard Company make both plain and self-rising flour?

A. Yes, sir.

Q. 9. How long have you been a cereal chemist for Ballard & Ballard?

A. About eight years. A little over eight years.

Q. 10. What is the size of the concern, Ballard & Ballard Company, a small concern, a large concern, or what?

A. No, it is a large concern.

Q. 11. How does it compare, if you know with other flour mills in the southeastern territory?

A. Well, it is the largest flour mill in the southeast, and it is the largest soft winter wheat flour mill in the world, at least that is the slogan of our advertising department.

Q. 12. Can you tell me what the daily capacity in barrels of Ballard & Ballard Company is?

A. Yes, sir; the daily capacity is three thousand barrels.

Q. 13. Does that mean a twenty-four or a twelve hour shift?

A. That means in twenty-four hours.

Q. 14. Can you tell me what the investment of Ballard & Ballard Company is?

A. Well, I understand it is about a Million and a quarter Dollars investment; but I also understand that that does not cover the value of the company, because of such intangible values such as the good-will and reputation, which are worth a lot more in addition to that.

Q. 15. They are not included in that figure?

A. No, sir.

Q. 16. You say you have been the cereal chemist for Ballard & Ballard Company for something over eight years, I believe you say?

A. Yes, eight and almost a half, to be exact.

Q. 17. Before you went with Ballard and Ballard, as chemist, what were you doing?

A. I was fertilizer chemist for a fertilizer concern in Louisville, Kentucky, for two years prior to my connection with the Ballard & Ballard Company.

Q. 18. Prior to that, where were you, what were you doing?

A. Prior to that I was, a year and a half in the army. Prior to that I was in Baltimore as fertilizer chemist for six months.

Q. 19. Yes.

A. Shall I keep on? Do you want me to give you my life's history? And prior to that I was four years at Penn State.

Q. 20. Four years at Penn State College?

A. Yes, sir.

Q. 21. Where is Penn State College located?

A. Located at State College Pennsylvania.

Q. 22. Did you graduate from Penn State College?

A. Yes, sir.

Q. 23. With what degree?

A. With the degree of Bachelor of Science, and Agricultural Chemist.

Q. 24. Do you know Mr. Dulrick's book on practical milling?

A. Yes, sir.

Q. 25. Is that regarded as an authority for the mechanical end of practical milling?

A. Yes, it is the best book that has been published on the mechanical end of milling.

Q. 26. How?

A. On the mechanical aspects of milling.

Q. 27. He is a professor at Penn State College, isn't he?

A. Yes.

Q. 28. Does the Ballard & Ballard Company maintain a laboratory?

A. Yes, sir.

Q. 29. And you, as chemist, are the head of that laboratory?

A. Yes, sir.

Q. 30. Now, will you tell us what your duties are as chemist for Ballard & Ballard Company?

A. Well, the duties of the laboratory consist of the analyzing of the flours, the analysis of wheats, the analysis of feeds, the grinding of samples of wheat on the experimental mill.

Q. 31. Do you have an experimental mill in connection with your laboratory?

A. Yes.

Q. 32. Upon which you grind wheat?

A. Yes, sir.

Q. 33. For what purpose?

A. For determining on small quantities of wheat, the analytical data on flour from that wheat, and also the baking quality of the flour from that wheat.

Q. 34. Are you familiar with the operation of a flour mill that is, one grinding the wheat into the flour?

A. Yes, I am familiar with such operation.

Q. 35. Are there any other duties that you have as head of this laboratory, and chemist for Ballard & Ballard?

A. No, sir.

Q. 36. Do you have charge of the preparation of new types of flour?

A. Yes, sir.

Mr. Malone: How is that, the preparation of what?

Mr. Bane: New type of flour.

A. Yes, sir. And in addition to that, we also have charge of the baking tests, which are conducted also in the laboratory.

Q. 37. Do you in addition to analyzing the flour—I believe you say you analyze the flour and the wheat?

A. Yes, sir.

Q. 38. Do you also analyze the other ingredients going into the flour, whether it is plain or self-rising? That is, do you analyze the phosphate, soda, salt?

A. Oh, yes.

Q. 39. You analyze those, too?

A. We analyze those, also.

Q. 40. Now, I want to ask, when you say you analyze the wheat and the flour, what do you mean? What do you do to it to analyze it? You do what? What is the purpose of the analysis?

A. Do you wish me to describe?

Q. 41. Tell me first, what the purpose of the analysis of the wheat and the flour is?

A. Well, the purpose of the analysis of the wheat and flour, is to determine its characteristics in regard to moisture, and ash and protein and gluten.

Q. 42. Well, gluten is protein, isn't it?

A. Practically the same thing, but determined in a different manner.

Q. 43. Yes?

A. And the absorption and baking qualities.

Q. 44. Do you also examine it to determine the acidity of the flour?

A. Yes, sir.

Q. 45. You do?

A. At greater intervals, but that is not the routine procedure.

Q. 46. The routine procedure is the analysis of the wheat and flour for the determination of the protein, the ash, the moisture and the absorption qualities?

A. Yes, and I might also add we note the color of the flour, also.

Q. 47. Do you determine in your analysis, regularly, the starch content of the flour?

A. Not directly. We can determine that indirectly, but we do not determine it directly, the starch content.

Q. 48. What do you mean by it can be determined in-

directly? Do you mean that can be determined from the other analysis that you make?

A. Yes, if you add together the moisture, the protein, the ash, the fat and the fiber content of a flour and subtract that per cent from 100 per cent, the result will be the nitrogen, free extract, or digestible carbo-hydrates, and that means the starch.

Q. 49. Do you determine the fiber content of the flour?

A. Very seldom. We sometimes do, and do that solely for the reason that it is very small.

Q. 50. It is a very infinitesimal thing, ordinarily.

A. Yes, less than one-half of one per cent.

Q. 51. Does the determination of the protein content of the flour or the wheat, give you inversely the amount of starch in it?

A. Yes, that is the inverse indication of the amount of starch in the flour; and the higher the protein in the flour, the lower the starch content, and the lower the protein the higher the starch content, other things being equal.

Q. 52. What is the reason or the advantage of determining the protein content of flour?

A. The advantage of determining the protein content of the flour is that it gives you an indication of the strength of the flour.

Q. 53. What do you mean by the strength of the flour?

A. Well, the strength of the flour is the ability of the flour to absorb moisture and to withstand fermentation, and to give you an acceptable loaf of bread, a large volume, well piled load, which is symmetrical in shape.

Q. 54. What is the value and purpose of determining the ash of flour or wheat, the content?

A. The ash content of flour gives you an indication of the grade of the flour.

Q. 55. How?

A. By that I mean that the ash content of high-grade flours is lower than the ash content of low grade flours, and by determining the ash content of the flour you can judge approximately the grade of the flour.

Q. 56. What is the value of determining the moisture content?

A. Well, that has two values. One is, that the moisture content of flour is important because if it is too high, the flour will spoil. If it is too low, it has a tendency to get rancid under poor storage conditions; and the

moisture content of the flour is also important, because these other figures for protein and ash must have some basis for reducing, and the moisture content gives you that basis.

Q. 57. You told us what would happen if the flour was too high in moisture. What would happen if it is too low?

A. Well, if it is too low in moisture, the flour gets dry and dusty and has a tendency to become rancid, that is, the facts in the flour will decompose slightly.

Q. 58. What is the value of determining the absorption of the flour?

A. Well, the absorption of flour is important from view point that if it is to absorb water—some flours will absorb more water that other flours, and the determination of the absorption gives you that characteristic of that particular flour, whether it will absorb great amounts of water, or less amounts of water.

Q. 59. Does not the degree of absorption have something to do with the quantity of bread or dough that can be made from the flour?

A. Yes, the amount of dough obtained from the flour of high absorption is of course greater than the quantity of dough obtained from flours of low absorption.

Q. 60. Now, Ballard & Ballard Company, I believe you said, were soft wheat millers, that is, they grind soft wheat into flour, is that right?

A. That is right.

Q. 61. That is right. Is soft wheat as strong as hard wheat?

A. No, sir.

Q. 62. Is soft wheat as high in protein as hard wheat?

A. No, sir.

Q. 63. Is it as high in starch as hard wheat?

A. It is usually higher in starch.

Q. 64. From those qualities it is more suitable for what character of baking?

A. From those qualities it is more suitable for biscuit and pastry flours.

Q. 65. Are there different grades or kinds of soft wheat?

A. Yes, sir.

Q. 66. Do these different grades or kinds of soft wheat produce different grades or characters of flour?

A. Yes, sir, different grades of soft wheat produce flours of different characteristics.

Q. 67. Now, will you tell us what is your method and how you analyze the wheat and flour to determine the protein content?

A. Do you mean that you want a detailed description of the actual method?

Q. 68. Yes, a description of the actual method.

A. Of the actual method, itself?

Q. 69. Yes.

A. In determining the protein content of flour a weighed sample of the flour is placed in a flask and suitable amounts of certain chemicals are added.

Q. 70. What chemicals are those?

A. The chemicals are sulphuric acid, sodium sulphate, potassium sulphate and mercuric acid or oxide; and this flask is then subjected to heat and is digested, or, in other words boiled for a suitable period of time, which, in the case of flour, is one hour. Now, that method that I am describing is the one specified in the book of methods of the American Association of Cereal Chemists. Now at that point of the digestion the flask is then removed from the digestion stand and some water added to it, and some concentrated caustic soda, and the nitrogen which is in the form of ammonia at that stake is distilled into a measured quantity of standard acid, at which point the amount of ammonia may be determined by titration and the protein of the original flour calculated from that nitrogen or ammonia content.

Q. 71. That is known as what method.

A. That is known as the Kjeldahl method, with modifications.

Q. 72. Is that the only method for quantitatively determining the quantities of protein in flour and wheat?

A. That is the only method for determining the protein content of flour. There is a method for determining the gluten content in flour, which is a crude method, and which does not give you exactly the same results, but it gives approximately the same results. That method is that known as the hand-washing method, in which the starch is all washed away, leaving the gluten in the palm of the hand. Of course that method is much cruder and does not compare in accuracy with the chemical method.

Q. 73. Now, how do you determine the ash content of the flour or the wheat, Mr. Whiting?

A. In determining the ash content of the flour, a weighed amount of flour is placed in a small crucible and subjected to 550 degrees centigrade for four hours. At the end of that time the crucible is removed from the ash

furnace and cooled and weighed. The amount of ash in that particular sample of flour then is determined by the difference in weight between the original crucible and the crucible containing the ash, which figure is divided by the weight of the sample multiplied by one hundred and you have the percentage of ash in the flour.

Q. 74. And I believe you said the ash content determined the grade of the flour, the higher the ash the lower the grade and the lower the ash the higher the grade of the flour?

A. The ash content is an indication of the grade of the flour, yes, sir.

Q. 75. And the higher the ash content, the lower the grade of the flour, and the lower the ash content the higher the grade of the flour. Is that correct?

A. That is correct. That applies to plain flour.

Q. 76. What do you mean by that?

A. Well, I mean by that, if you add phosphate to the flour, the ash content is, of course, increased.

Q. 77. Is increased. Then, after the phosphate is added, to determine the grade of the flour, you have to know exactly the quantity of phosphate that has been added, so that you may make allowance for that, in order to determine the ash content of the flour, is that correct?

A. That is right. You can also, by determining the ash content of the flour with phosphate only present, can prophesy or can—yes phophesy what the original ash content of the flour was.

Q. 78. If you know how much phosphate has been added to the flour?

A. Yes, if you know how much phosphate has been added.

Q. 79. Does the same ash content, Mr. Whiting, indicate the same grade of flour between flours made by different mills?

A. Not necessarily.

Q. 80. Why?

A. There may be some variation in the grade of the flour of the same ash content, if those flours come from different mills.

Q. 81. Why?

A. That is due to the kind of wheat that the flour was made from. It is also due to the method of grinding the flour and it is also due to the method of combining the flour from the mill. They may take all of the flour, they may take only half of the flour, or they may take any

proportion of the flour stream and turn that out, and this combination of streams is different in almost every mill.

Q. 82. Then, the amount of flour that is taken off the stream in a mill and put into certain grades or certain so-called grades or classes of flour differs with different mills? Is that right?

A. That is right.

Q. 83. And the methods of grinding differ in the different mills?

A. Oh, yes, very greatly.

Q. 84. And the different mills use somewhat different grades or kinds of wheat, although they may all be using soft wheat, is that true?

A. That is correct.

Q. 85. Now, will you tell us, Mr. Whiting, what the moisture test is? How do you determine the moisture?

A. The moisture test is the method of determining the amount of moisture in the flour. Do you wish me to give a description of that test?

Q. 86. Yes, tell us how you do that?

A. Weighed portion of flour or ground wheat meal is placed in a small dish and placed in a dry oven which is maintained at a stated uniform temperature for a certain period of time—do you wish me to give the length of time, the temperatures and so on?

Q. 87. Yes?

A. The temperature is 130 degrees Centigrade, for one hour. At the end of that time the material in the dish has lost a certain amount of weight, and the dish is removed from oven, cooled and weighed and the loss in weight is described as moisture.

Q. 88. Now, will you please explain to us the absorption test?

A. The absorption test is a test which takes a weighed quantity of flour, and to that weighed quantity of flour you add a measured or weighed quantity of water, until you get a dough of the correct consistency for proper handling.

Q. 89. Proper handling?

A. Yes. And the amount of moisture then, that is used to get the dough to that proper consistency is figured on a percentage basis and is the percentage of absorption of that particular flour.

Q. 90. And then, in addition to those tests, I believe you said you also use, to determine the kind of product the flour would turn out, you use the baking test?

A. Yes, sir.

Q. 91. To see what kind of bread it will make?

A. Yes, sir.

Q. 92. That is true, is it?

A. That is true, the baking test.

Q. 93. Do you know the so-called paddle test for flour?

A. Yes, we use that also.

Q. 94. What is that?

A. The paddle test, or the "slick" test as we usually refer to it, is to place on a piece of board a small pile of flour and smooth it down with a steel slick, until the surface is very smooth, and the color then of the flour—

Q. 95. Then by looking at it—

A. By looking at it with the eye, the color of the flour is apparent.

Q. 96. Now, in addition to that test, putting the flour on the paddle or board and smoothing it down and looking at it, that is dry?

A. That is dry flour.

Q. 97. Do you also, as a part of that test, or another test, dip that flour on the board into water and taking it out again you look at it again?

A. Yes, you trim the edges of this slick of flour, trim the edges off immerse that paddle into a can of water and the color of the flour can also be noted down as it shows up when the flour is wet; and if you want to, you can put two flours side by side on this paddle, slick them down and look at them dry and also immerse them in water and observe the color of the flours with each other when wet.

Q. 98. And observe the colors of the two flours?

A. Yes, sir; observe the colors of the two flours.

Q. 99. The comparative colors of the two flours when wet and dry?

A. That is correct?

Q. 100. Will the wetting of the flour sometimes change the lighter colored flour to the darker color of the two?

A. That has been my experience, that such is the case. The flour which is whiter in the dry will show up darker after it has been wet.

Q. 101. The flour which is whiter when dry will show up darker when wet, and vice-versa?

Q. 102. Suppose you let that flour which has been wet, dry out after you wet it, what happens?

A. Well, the comparison of the colors of the two flours after the slick has been dried out may remain the same as it was when it was wet, or it may change back

again to the way it was when it was dry. There is no set rule that can be followed as to what you will get. The observation of that particular characteristic is just noted down.

Q. 103. By that test can you tell anything about the protein content of the flour?

A. No, sir.

Q. 104. Or of the ash content of the flour?

A. No.

Q. 105. Or the moisture content of the flour?

A. No.

Q. 106. Or the absorption qualities of the flour?

A. No.

Q. 107. Do I understand that is true, that you cannot tell anything about those qualities of the flour; whether you use the paddle dry, or whether you use it on a paddle or board that is wet, or whether you use it on a paddle or board wet, and then let it dry; is that true?

A. That is true, either wet, dry or dried out, you cannot say whether the flour has eight per cent protein or eleven per cent protein.

Q. 108. You cannot tell anything about the protein content or the absorption quality, from the flour on the board?

A. That is correct.

Examiner Sheppard: In other words by the paddle method you cannot.

A. In other words, by the paddle method you cannot tell the protein content.

Q. 109. Or the ash content or the moisture or the absorption qualities?

A. Or the ash content, or the moisture or absorption, you cannot.

Q. 110. Can you tell anything by what we will call the paddle test here, about the grade or the character of the flour?

A. Well, by the paddle test you can tell something about the color of the flour.

Q. 111. But, can you tell anything about the grade or the character of the flour, the actual grade of the flour, or the character?

A. You can tell something about the grade of the flour.

Q. 112. How do you mean you can tell something about the grade of the flour?

A. Because on a paddle test, the higher grade flour,

or the better dressed flours do not have as many specks in them as the low grade flours. Very low grade flours will have a great many specks in them, and in comparison of the flours on the paddle test you can tell whether the flour is very specky or not, and you can also tell something of the color of the flour, whether one is whiter than the other.

Q. 113. All you can tell by the so-called paddle test, is the relative color, if you put two on there?

A. You can tell the relative color of the two flours, and you can also tell the relative speckiness of the two flours.

Q. 114. Well, the relative speckiness has something to do with the color, hasn't it?

A. Of a certain color. There are two kinds of color in flour, yellow color and also brown color. Two flours may be equal in regard to the amount of yellow color that is there but the amount of brown color of one may be much more than in the other.

Q. 115. Suppose they have the same amount of brown color, the same amount of specks in the two samples of flour you have on the paddle, practically the same amount of specks; can you, by this paddle test tell anything about the relative grades or qualities of the flours?

A. You can look at them, and you can observe the fact that one is whiter than the other, and that may or may not mean that one flour is better grade than the other.

Q. 116. That is what I mean, you cannot tell, it may or it may not be?

A. It may not be.

Q. 117. You cannot tell anything about the grade of the flour from the so-called paddle test?

A. No, not from the so-called paddle test, alone.

Q. 118. Can you tell anything about the character of the flour from the so-called paddle test?

A. You can tell in a great many instances whether the flour is a soft wheat flour or a hard wheat flour by the granularity or the look of the flour in some tests.

Q. 119. You can in some instances. Can you in all instances?

A. Not in all instances.

Q. 120. Don't some hard wheat mills grind finer than other hard wheat mills?

A. Yes, sir.

Q. 121. Don't some soft wheat mills grind finer than other soft wheat mills?

A. Yes, sir.

Q. 122. And don't some soft wheat mills grind finer than some hard wheat mills?

A. Yes, sir.

Q. 123. And do not some hard wheat mills grind finer than some soft wheat mills?

A. Perhaps there might be some hard wheat mills which grind finer than some soft wheat mills.

Q. 124. Grind finer?

A. Grind finer, there might be.

Q. 125. Have not you analyzed flours of competitors?

A. A great many.

Q. 126. Have you or not determined from those analyses of flours of competitors, and from the use of the paddle test in connection with the analysis, that you cannot tell anything about the grade or the character of the flour by the so-called paddle test?

A. No, it is almost impossible to correlate the results of the padde tests with the analytical results, such as for protein and ash.

Q. 127. With the actual analysis?

A. Yes, with the actual analysis. Sometimes the grade will correspond to the results you get by looking at the paddle test, and some times the analytical results will not agree with the paddle tests.

Q. 128. In other words, with what you observe from the paddle test?

A. Yes, sir.

Q. 129. Well, different mills, Mr. Whiting, will produce flours of different appearances from the same wheat?

A. Yes they will.

Q. 130. Why?

A. For the reason that the method of grinding in various mills is widely different. Some have two breaks, some as high as six breaks and the flour from the same wheat from mills which grind differently will have different appearance, and in many cases different analyses.

Q. 131. Can you bleach a lower grade of flour, or can a lower grade of flour be bleached and made to look better, that is whiter than a higher grade of flour?

A. Well, a lower grade of flour can be bleached to look whiter than a higher grade of flour, if the higher grade of flour has a lighter.

Q. 132. A lighter bleach?

A. A lighter amount of bleach, and then also the flours are not too widely separated in their characteristics.

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Q. 133. Do not all the mills, if you know, do not all the mills bleach the flour to some extent right on the mill stream?

A. Well, practically all of them bleach—I should say that the percentage is very high, that is, most of the flour on the market is bleached flour.

Q. 134. Is not that bleaching done on the mill stream?

A. Yes, sir.

Q. 135. Does the granulation have anything to do with the appearance of the flour?

A. Yes, the granulation has a great deal to do with the appearance of the flour, because a granular flour appears to be darker in color than the same grade of finely ground flour.

Q. 136. Do you know anything about what I might call the "boiled dough" test for flour, that is, making the flour into dough and then putting it into a boiling water?

A. Well, I have heard of such test.

Q. 137. Is that of any value in determining the grade or the quality of the flour?

A. No, sir, that might possibly be used as a test for determining the unsoundness, but it is a rather crude test, and it may or may not show the unsoundness in the flour. So far as determining the grade and quality, it will not determine the grade and quality.

Q. 138. The amount of bleaching,if you know, does not the amount of bleaching as between different mills, differ, some bleach more than other mills do?

A. That is true. Different mills bleach with different amounts of bleach, and different kinds of bleach.

Q. 139. And different kinds of bleach?

A. Yes.

Q. 140. Do you know the bleaching agent Novadell?

A. Yes.

Q. 141. What kind of bleaching agent is that?

A. Well, Novadell is a white powder which is fed into the flour, and the active bleaching agent in that white powder is benzoyl peroxide, and the flour then, with this material incorporated, will be whitened considerably after forty-eight hours.

Q. 142. Is that the bleaching process generally used by the mills, if you know?

A. That is the newest process which has been developed, but it is not as popular with the mills as another process.

Q. 143. Known as what?

A. Known as the Agene process.

Q. 144. And that is used to a greater extent than the novadell?

A. The agene process is used to a greater extent than the novadell.

Q. 145. What effect, Mr. Whiting, if any, does the bleaching have on the flour?

A. Well, bleaching has a number of effects. The first one might be called a maturing effect, which is a conditioning of the gluten in the flour, so that it makes a better baked product. It also increases the capacity of the gluten to absorb water, and it also has a whitening effect.

Q. 146. You say it matures the flour, that is, it makes it better?

A. Makes the flour bake better.

Q. 147. Bake better?

A. Gives a better baking quality to the flour.

Q. 148. Do all bleaching agents produce that effect on the flour, that is maturing effect?

A. All of them do not produce it to the same degree.

Q. 149. To the same degree?

A. No, sir.

Q. 150. What about the Novadell process?

A. Well, the Novadell process is principally used for its whitening effect on flour, and its maturing effect is small.

Q. 151. Very small, is that right?

A. Yes, it is small.

Q. 152. Does it mature the flour to the same extent as —what was the other process?

A. It does not. The Agene process. It does not mature the flour to the same extent as the Agene. In that process the chemical used is nitrogen-tri-chloride. And, as I said, the maturing effect of Novadell is not as great as the Agene, or the Chlorine.

Q. 153. The Chlorine being another bleaching agent, you use?

A. Yes.

Q. 154. Can the same maturing effect on the flour be gotten without using any one of the so-called bleaching agents?

A. Yes, sir.

Q. 155. How?

A. You can mature flour by storing it for, say six months and the flour then matures and attains to a certain degree the same characteristics that you get by maturing it immediately upon making it.

Q. 156. That is, maturing it immediately upon making it by adding the bleaching agents?

A. Yes, sir. The storing of the flour also has this maturing effect and also whitens it some.

Q. 157. In what kind of place does the flour have to be stored?

A. Well, the flour has to be stored in a place where the air can be circulated around it, because the maturing is an oxydizing effect. You need plenty of air to get the effect, and therefore the flour has to be in open piles, so that plenty of air circulates around it.

Q. 158. And does the place have to be a cool and dry one, also?

A. Well, in order to preserve the flour in suitable shape for ultimate consumption it certainly has to be kept dry, and also has to be kept cool. If it is not kept cool and dry, it will undoubtedly spoil.

Q. 159. What are the advantages, if there are any, in maturing the flour at the time it is made, by the so-called bleaching agents, or storing it?

A. What was the advantage, did I understand?

Q. 160. Are there any advantages?

A. In bleaching the flour immediately?

Q. 161. Yes, maturing it by using one of the so-called bleaching agents immediately it is made, or by letting it mature through storing it?

A. Yes.

Q. 172. Well, what are they?

A. Maturing it immediately has these advantages: The first one is that you do not have to store the flour and have a large amount of capital tied up in stored flour for six months. And the other advantage is, that you do not have to re-treat the flour then for such damage as has occurred from rats, mice or dirty sacks or any other thing that might have gotten into the flour during the period of storage. You can mature the flour immediately and put it into the car and ship it.

Q. 173. Do you know whether or not it is very difficult to keep rats out of the stored flour?

A. Yes, it is rather difficult to keep rats out, and also mice out of the stored flour.

Q. 174. Of course if they get in, and you want to have the flour in proper condition, you have to re-treat the flour?

A. Yes. Of course you could not send out flour in torn, mouse eaten sacks, and you would have to be sure also, there was not anything in the flour, any foreign matter in that flour, such as rat nests, which might con-

ceivably get in there from a long storage, on account of the long storage.

Q. 175. What is raw flour, or what does the term raw flour mean, if you know, Mr. Whiting?

A. Well, to me, raw flour means any flour that is not cooked.

Q. 176. Is there any such term in the milling industry, as raw flour?

A. Well, to my knowledge there is not, unless by that term they mean any flour that is not cooked.

Q. 177. Flour that is not baked?

A. Yes, baked into biscuits or bread, it would be raw, then.

Q. 178. What is the meaning of the term, Mr. Whiting, of "processed" flour?

A. Well, is there—just exactly what the term processed flour means there. I think I—I think it is easily conceivable that processed flour might mean flour that has gotten off-grade and has been re-mixed with other good flour to bring the grade of the flour up to suitable selling standard.

Q. 179. Or, up to a higher level than the off-grade flour?

A. Sure.

Q. 180. Raise the low up to a grade higher than the particular off-grade?

A. Yes.

Q. 181. Is there any such term or phrase in the industry that you know of, that has any different meaning?

A. You mean—

Q. 182. As processed flour?

A. Well, I do not know of any particular kind of flour that is processed flour.

Q. 183. Did you ever hear of any?

A. I do not know exactly what processed flour is.

Q. 184. Did you ever hear the term used in the industry?

A. Not used to my knowledge.

Q. 185. Not used to designate any flour in the industry, to your knowledge, any particular kind or character?

A. Not to my knowledge, it has not come to my attention.

Q. 186. I believe you said you were familiar with the milling operation?

A. Yes, sir.

Q. 187. And, are you also familiar with the operation used by many of the so-called blenders of flour?

A. Yes, I am familiar with the kind of machinery that is used in blending plants.

Q. 188. And are you also familiar with the kind of machinery used and the method used to prepare the self-rising flour?

A. Yes, I know what self-rising flour is.

Q. 189. The Ballard & Ballard Company prepares and sells self-rising flour, does not it?

A. Yes, we prepare and sell self-rising flour.

Q. 190. Does the putting of the flour through the process used by the blenders improve or make any better the grade of the flour? Does it improve the grade of the flour?

A. No, it does not improve the grade or the quality of the flour.

Q. 191. Does the putting of the flour through the process used to prepare self-rising flour, improve or better the grade or the quality of the flour?

A. No, the grade of the flour is the same after self-rising flour has been made out of it, as the grade of the flour that you started to use in the process.

Q. 192. That you put into it, or that you originally started with?

A. Yes, sir.

Q. 193. That you put into the mixer in the first instance?

A. Yes, sir.

Q. 194. Then, if I understand you correctly, putting the flour through these mixers, running it through the elevator shaft and over the reels, again, and into the packers, that agitation and aeriation which takes place there, adds nothing to the quality or the grade of the flour, is that right?

A. Well, it does not change the quality or the grade of the flour in any way. Now—

Q. 195. Well, does it—

Mr. Malone: Wait and let him finish. What were you going to say?

Mr. Bane: Pardon me.

Mr. Malone: Go on, Mr. Whiting.

A. I was going to say that the treatment of this flour does not change the grade nor the quality of the flour, but that the—and the aeriation which you speak of, which takes place during this sifting and mixing operation is all counter-balanced by the succeeding packing of the flour in sacks by means of the packers, and the flour is then

in a solid or compact mass, just as it was when it was originally put into the mixer.

Q. 196. Is there any operation in this preparation of this self-rising flour, is there any operation you can properly term, or properly call a grinding of the flour?

A. No, there is no grinding operation in the making of self-rising flour.

Q. 197. Now, Mr. Whiting, why is phosphate added to the flour?

A. Well, in self-rising flour it is added as one of the ingredients of the baking powder, to set free the carbon dioxide gas from the soda, and it is also added to plain flour, and when added to the plain flour it is usually added in the amount of about one-half of one per cent.

Q. 198. And it is added in some different quantities by the different mills?

A. Oh, yes, it is added in different quantities, depending on the mill, also depending on the grade of the flour. And, I believe you want to know the—

Q. 199. The purpose of that.

A. The purpose of adding such phosphate?

Q. 200. Yes?

A. The first thing that this phosphate adds to the flour is that it gives the flour a margin of safety so that in the hands of a housewife who wants to stick into her biscuits a pinch of soda, as many of them do, she will not have failures in her biscuits. The phosphate which is present in the flour will neutralize any excess soda which the housewife happens to put into the biscuits, and the biscuits will turn out all right. Another reason that the phosphate is added to the flour is that it increases the whiteness of the baked product. That is, the phosphate flour when baked into biscuit, will have a whiter color than flour which is not phosphated, and if you want another reason, the reason is often given that the addition of phosphate to flour replaces some of the neutrative values of phosphate which is removed in the process of milling. By that I mean the ash and mineral content of bran is much higher than that of flour, and of course that is removed and some shorts, so the addition of phosphate replaces that.

Q. 201. This adds additional food value to the flour?

A. Yes, so far as the mineral constituents are concerned.

Q. 202. Is phosphate added to hard wheat flour as well as soft wheat flour, if you know?

A. Yes, sir, it is.

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Q. 203. Do all mills practically, add phosphate to the flour?

A. All mills, practically, add phosphate to some grades of flour, but not to all grades of flour, but to some grades.

Q. 204. To some grades of flour?

A. And in some mills.

Q. 205. Do you also—

A. (Interrupting) I was going to say, that the territory to which the flour goes determines sometimes whether the phosphate is added to that grade of flour or not, for the reason that some territories are greater users of sodas in baking biscuits than other territories.

Q. 206. You say some mills do not add phosphate to all grades of flour?

A. That is right.

Q. 207. Is it true that some mills also do add phosphates to all grades of flour?

A. Well, I imagine that there are mills that do add phosphates to all grades of flour. I cannot state positively on that point.

Q. 208. What is meant by patent flour, Mr. Whiting?

A. Well, patent flour is a rather difficult term to explain, because it means so many different things. It can mean, or may not, all the best grades of flour which a mill makes; but a mill can make—can put 35 to 95 per cent of its best flour out and call it a patent flour, and for that reason the terms patent does not mean anything specific.

Q. 209. As applied to the industry as a whole?

A. That is right.

Q. 210. The term patent does not mean anything specific as applied to the industry as a whole?

A. It usually means just the best grade of flour that the mill puts out.

Q. 211. That the particular mill puts out?

A. Yes, sir.

Q. 212. Some mills may use 35 per cent of the best flour they make, or use 35 per cent of the run in their patent flour?

A. That is right.

Q. 213. And some may use as much as 95 per cent in their patent flour?

A. That is correct.

Q. 214. And there are mills that use any per cent in between that 35 and 95 per cent, is there?

A. There are mills that use any per cent in between those two?

Q. 215. Mills may use any per cent between those two in what they call the so-called patent flour?

A. That is right.

Q. 216. The patent flour really is the amount of best grade of flour, or it is really the per cent of the flour that is taken off the stream as the best grade of flour, is it?

A. That is the usual meaning of the term patent, yes.

Q. 217. Then, that differs very materially with the different mills, does not it?

A. It does, yes.

Q. 218. What is a "Straight" flour?

A. A "Straight" flour is a flour that contains all of the flour that they do not mix, in other words, it is a 100 per cent flour.

Q. 219. A One Hundred per cent flour that the mill extracts from the wheat?

A. Yes, sir.

Q. 220. What is a "Plain" flour?

A. A "plain" flour is a flour to which no phosphate, soda or salt has been added.

Q. 221. What is "Clear" flour?

A. "Clear" flour is a flour which is removed after the patent flour has been taken out.

Q. 222. That is, it is the second best?

A. The second best, or probably the third best. In some instances that I have spoken of is second clear. A clear flour is a grade of flour that is removed from the total flour after the patent has been taken out, and that clear might be all of the flour that is left after the patent has been removed, or might be only a percentage of that remaining flour.

Q. 223. What is "low grade" flour?

A. Well, "low grade" flour is the term used to designate all of the lowest grades. In case a mill removes from the tail of the mill a small per cent of poor flour, that is usually designated as low grade.

Q. 224. Now, the percentage, if I understand you correctly, of these various forms of flour, patent, straight, clear and low grade, may be quite different, as made by the different mills?

A. Well, it usually differs with every mill.

Q. 225. It usually differs with every mill, and among the various mills it will differ to a large extent?

A. Yes.

Q. 226. Why?

A. Well, it will differ because of the kind of flour which is salable in the various territories. It will also

differ with the kind or analysis that the mill wishes to produce on any particular grade of flour.

Q. 227. Or in particular brands it is selling?

A. Or in the particular brands.

Q. 228. Yes. And it will differ also, or the percentage produced will be affected by the method of operation in the mill too, won't it?

A. Well, it will undoubtedly be affected by the method of grinding. Because, in some mills with different numbers of grinds—not different numbers of breaks, the percentages can easily vary.

Q. 229. Now, how is, and from what is the best flour ordinarily gotten in a mill?

A. Well, the best flour from any mill is obtained from the middlings, which are the lumps of flour that are obtained on the first and second breaks. Those middlings or lumps of flour are separated by means of sifters and then re-ground into flour, and the flour that is obtained from that material is the best grade.

Q. 230. And the grade of the flour obtained from that depends somewhat, too, upon the number of breaks to which you subject those middlings, does not it?

A. Yes, it does.

Q. 231. And in different mills those middlings are subjected to different numbers of breaks, aren't they,

A. Yes, the middlings are subjected to different numbers of grinds. Grinds are usually the terms used in describing the grinding of the middlings, and breaks are used, usually, in describing the grinding of the wheat.

Q. 232. The whole berry?

A. The whole wheat berry. In some mills there may be six grinds, and in others there may be as high as fifteen or sixteen grinds.

Q. 233. Those different grinds have something to do with determining the quality of the flour produced from the grinding of those middlings, does not it?

A. State that again.

Mr. Bane: Read the question.

(The question was repeated to the witness.)

A. Yes, the flour from a six grind mill will be different than the flour from a fourteen grind mill for example.

Q. 234. Which will be the better?

A. Well, you could not compare the grades of flour, only upon the number of grinds that the mill has. That

is to say, you cannot say that a mill with fourteen grinds, produces a better flour than a mill with six grinds.

Q. 235. Not necessarily?

A. No, not necessarily, because there are so many other things in the grinding operation that enter in there, the breaks also enter, so you could not say that. But, the characteristics of the flour are different, and the amount of flour obtained from the wheat is sometimes greater in a mill with more grinds.

Q. 236. But, is not it, as a general rule, true, that an excessive grinding of the wheat causes a larger amount of bran and brown specks in flour?

A. Well, you see when wheat is ground, you cannot secure from that wheat all of the flour on a small number of breaks or a small number of grinds. There is a certain amount of flour, endosperm that adheres to the brown particles and in grinding and regrinding this bran to obtain from it as much of that flour as possible, it is true that a certain part of these bran particles are also pulverized and come through the sifters with the flour. Now, as I said once before, the amount of ash or mineral matter in the flour the—the amount of ash or mineral matter in the bran is higher than it is in the flour, consequently the more bran specks you have in a flour, the higher the ash is going to be, and that means the more grinding it takes to separate the flour from the bran, the lower that grade of flour is going to be.

Q. 237. Now, it is generally considered the better grade of flour is that gotten from the first grinding of the middlings; the second grinding of the middlings or the third grinding of the middlings?

A. Well, in most mills the practice is to take the best grades of flour from the first, second and third, and sometimes the fourth grinding of the middlings.

Q. 238. Those are considered the better grades of the flour?

A. Yes, that is the better grade of flour.

Q. 239. Than the subsequent grindings?

A. Yes, than the fifth, sixth, seventh, eighth, ninth, tenth and on down to whatever number happens to be in the mill.

Q. 240. Does the agitation of the flour in these mixing machines, used in making self-rising flour, or in blending flour, does that take out a part of the moisture content of the flour, and improve its quality?

A. It might or might not, take out some of the moisture content. That would just depend on the day upon which that operation was done. For example, whether

the moisture was reduced or the moisture increased, would depend upon the relative humidity of the atmosphere.

Q. 241. Does that agitation of the flour in these mixing machines and then running it over the reels, does that change the quality of the flour?

A. If by quality of the flour you mean the grade of the flour, it does not change the grade nor the quality.

Q. 242. Mr. Whiting, does the putting of several different flours through this blending process, produce, or enable one to produce a more uniform grade of flour over a period of time than can be produced by a mill that buys and grinds the wheat into flour?

A. No, I should say that it would not produce as uniform type of flour as the blending of the wheats prior to the milling process.

Q. 243. Before the milling process?

A. Yes, sir.

Q. 244. And particularly is that true when you maintain a laboratory in which you analyze all of the wheats you blend and put into that mill; is that true?

A. Well, that is the idea of maintaining a laboratory, to keep things as uniform as possible.

Q. 245. To keep them—

A. To keep the mill mixes and mill—

Q. 246. Product?

A. —product uniform.

Q. 247. To keep the brands, in other words, up to a standard that you set for them, is that right?

A. Yes, sir.

Q. 248. Is the preparation of the self-rising flour by your mill, or the mill with which you are connected, a continuous process, that is, from the mill stream?

A. We manufacture the self-rising flour, just as fast as the mill turns out that flour, and if by continuous process, you mean by that, do we wait any period of time before making the self-rising flour, why then the process is continuous, because we do not wait any time before making the self-rising flour. We take the flour right from the—

Q. 249. Right from the mill stream?

A. As fast as the mill produces it?

Q. 250. And prepares the self-rising flour?

A. Yes, sir.

Examiner Sheppard: Two operations, the grinding and afterwards the blending?

A. Of course, you could not mix the self-rising ingredients in the grinding process.

Examiner Sheppard: That is what I say, first the milling process and after that the blending process?

A. The milling process is not connected with the mixing of the ingredients into the flour.

Examiner Sheppard: No, but one goes before the other, the milling process precedes the blending?

A. Yes, sir.

Q. 251. Because you have to make the flour first.

A. You cannot mix the self-rising ingredients with the wheat. Is that the idea?

Examiner Sheppard: Exactly.

A. You cannot mix the self-rising ingredients with the wheat to produce the self-rising flour by milling those together.

Examiner Sheppard: Correct. That is the reason I say your process is first, the milling process, and the second process, the blending process—all a continuous process when you make the self-rising flour?

A. That is right.

Q. 252. The latter is simply a mixing process, mixing the flour and ingredients you add for the self-rising quality?

A. That is right.

Q. 253. Does the blending process you have described here, does that produce an entirely distinct and different product from that put into the mixing machines?

A. Well, it produces a different product to this extent, that it has—it may not be like any one particular flour which was put into that mixer, but if a number of flours are mixed together, and the resulting flour which comes out, will be an average of the flours which are put into the mixture.

Q. 254. In other words, you get out what is merely a mixed product, having the characteristics and the qualities of an average of those that were originally started with?

A. Yes, the quality of the mixture of flour will be an average of the qualities of the original flours.

Q. 255. The original flours—did you get that.

A. The mixed flour may be better than the lowest grade of flour that was put into the mixer, but it won't be quite as good as the highest grade of flour which was put into that mixer.

Q. 256. But, it will still be flour?

A. It will still be flour.

Q. 257. But simply a mixture of the various kinds or grades of flour?

A. Yes. It will have a mathematical average of those qualities.

Q. 258. Can a blended flour be prepared right on the mill stream?

A. Yes, it is possible to blend the flour on the mill stream.

Q. 259. By running the various mill streams together?

A. Well, by running the various mill streams together.

Q. 260. That is, the various mill streams carrying different grades of flour?

A. Yes.

Q. 261. All right.

A. Well, that is done in every mill, at the time.

Q. 262. You say that is done in every mill, all the time?

A. Yes, sir.

Q. 263. Do you know whether or not the mills, before they start the grinding of the wheat, do they first subject the wheat to an analysis to determine the various qualities of the wheats, and then make a blend of the wheats with these different qualities for grinding, or do they just take one straight character of wheat, having one set of qualities for grinding?

A. In our mill we blend the wheats from different sections to get the uniform product that we want.

Q. 264. Is that true in—

A. That is true in any mill.

Q. 265. True in mills generally?

A. That is true in most mills.

Q. 266. Yes.

A. There are possible exceptions. But the milling process, when correctly done, the wheats are blended to give you the uniform quality in the flour you desire.

Q. 267. For your particular brands?

A. Yes, sir.

Q. 268. Can self-rising flour be prepared right on the mill stream, as the stream of flour is going through the mill?

A. By that, do you mean can self-rising ingredients be fed right into the mill stream?

Q. 269. Yes?

A. It is possible to feed those ingredients into the mill stream of flour immediately after it comes from the mill, by means of feeders. It is possible to do that.

Q. 270. But, the process that you use, as I understand, is what may be termed the batch mixer process, where it is run off the stream into the batch mixer?

A. Run off the stream into the batch mixer.

Q. 271. By runnning the flour directly off the mill stream into the batch mixer, in which are added the self-rising ingredients?

A. The ingredients are then added into the batch of flour.

Q. 272. It is then stirred up and run over the bolting machine and into the packer?

A. Yes, except between the mixing of the self-rising flour and the packer we do not bolt the flour.

Q. 273. You bolt the flour before it goes into the mixer, do you?

A. Yes, sir.

Q. 274. Do you know whether or not that so-called batch mixer process is a process generally used by the mills, or do they generally try to feed the ingredients in, right on the mill stream?

A. The batch mixing process is the one generally used.

Q. 275. The process then of preparing self-rising flour in your mill is the process of taking the flour just as it comes off the mill stream and mixing the ingredients with it, then running it to the packer and having it packed in any size bags you want?

A. That is a correct statement.

Mr. Malone: Read that.

(The preceding question and answer were read.)

Q. 276. In addition to that, before you put it into the mixers, between the mixers and the mill stream it is bolted?

A. All the bolting is done right in the mill.

Q. 277. In the mill stream?

A. Yes. We do not bolt after it is mixed with the self-rising ingredients.

Q. 278. Do you know whether or not most of the concerns grinding wheat into flour in this section of the country, that is, this southeastern territory, also prepare self-rising flour?

A. Yes, practically all of them prepare self-rising flour in addition to the plain flour.

Q. 279. Is the quality or the grade of the flour changed in any way by this process of preparing the self-rising flour?

A. No, the grade is not changed. The grade of the self-rising flour—the grade of the flour in the self-rising flour is exactly the same as it was before the mixing was accomplished.

Q. 280. The quality of the flour is not changed in any way, is it?

A. The quality of the flour is not changed.

Q. 281. The flour in itself is not changed in any way?

A. The flour itself is not changed in any way. The characteristics of the mixture, of course, are different.

Q. 282. Because of the addition?

A. Because of the addition of those self-rising ingredients.

Q. 283. The ingredients.

A. But, the flour itself is the same as before the mixing of the ingredients.

Q. 284. Can you tell us, Mr. Whiting, if you know, the period of time required in the ordinary mill to make the flour, from the time the wheat is received in the mill, or at the mill warehouse, to the time that it is turned out of the mill as marketable, saleable flour?

A. No. That length of time will vary with different mills.

Q. 285. It will vary with different mills?

A. Yes, sir.

Q. 286. Can you give us approximately the time required in the ordinary, the average mill, or can you give us an idea about the average time the mill requires?

A. Excluding the time the wheat is in storage, which we will not consider, we will say, with some mills?

Q. 287. Yes?

A. In some mills from the time the wheat is received in the mill and begins going through the process, until it comes out as flour, the length of time in some mills would be as short as eight hours, and in other mills it may be as long as fifty hours, or in rare instances,

sixty hours; and the different mills have different lengths of time in between that. Now, the reason that it takes that length of time is, that the tempering of the wheat requires different times in different mills, and different kinds of wheat require different periods of tempering, so if that is what you mean by that question, it varies from, say eight to fifty hours.

Q. 288. And then, does not the number of breaks and the number of different grindings to which the wheat and the flour is put in different mills have something to do with the time it takes the product to go through the mill?

A. Well, if we exclude the tempering time, in all cases, and only consider the time it takes the wheat from the first break rolls until it comes out as finished flour, that time varies from a half hour to an hour and a half depending on the length of the flow. In other words, two break mills might produce flour of an acceptable, marketable quality in a half hour, may be a little less, or it might take an hour until the wheat comes through as the finished flour in a mill with six breaks.

Q. 289. Then, the speed of the mill has something to do with it, does it, the speed with which the rolls are operated?

A. Well, the rolls, of course are operated at different speeds in different mills but the speed with which the various rolls revolve has nothing to do with the speed at which the flour comes out of the mill.

Q. 290. Well, does the number of bolting operations through which the flour is put in the mill stream between the various rolls, does that have anything to do with it?

A. Oh, yes, the number of bolting operations and the number of grinding operations have all to do with the rate of flour manufacture.

Q. 291. And that, I understand, excluding the tempering of the wheat and the storage of the wheat, will range anywhere from a half hour, did you say, up to an hour and a half?

Mr. Malone: He said an hour to an hour and a half.

A. I said a half hour to an hour and a half.

Q. 292. You think the slowest mills could complete that process in an hour and a half?

A. I think so, yes, sir.

Mr. Bane: That is all, Mr. Examiner.

L. D. Whiting

Examiner Sheppard: Mr. Malone, I have a few questions for Mr. Whiting. Mr. Bane has well covered the proposition for which the witness was called, but I want by a few questions to clear up matters in my mind. Then, I think I will adjourn and let you cross-examine after dinner.

Mr. Malone: All right.

Examiner Sheppard: Mr. Whiting, I did not understand exactly what is meant by bolting the flour. I would like for you to tell me in a few words what that means?

A. The bolting of flour is a part of the process which has to do with the separation of the branny particles of the wheat from the flour.

Mr. Bane: Simply sifting of the flour?

A. Yes, bolting and sifting are interchangeable terms.

Examiner Sheppard: I get the idea, getting rid of the chaff and the bran?

A. Yes, sir.

Mr. Bane: And the large particles?

A. Yes, that is correct.

Examiner Sheppard: Now, you spoke awhile ago of the uniform practice of bleaching flour?

A. Yes, sir.

Examiner Sheppard: Is there any flour that is sold in interstate commerce that is not bleached?

A. Yes, there is a little flour that is sold, that is not bleached.

Examiner Sheppard: What kind of flour is that? Is it used for cooking purposes?

A. It is usually used for baking purposes, that is, in bakeries. Those bakers, however, bleach the dough in the fermentation process and the product or baked bread is, of course, bleached, but the flour which they use is not bleached. Now, there is also one flour I can recall,

that is also sold to some extent to the family trade that is not bleached, but there is only one.

Examiner Sheppard: In other words then, I gather the impression from what you have stated, in most cases the manufacturers of flour bleach it before it is sold?

A. Yes. They do, unless it is specified on a particular order. For example, an ice cream cone manufacturer sometimes prefers an unbleached flour, and he may order a hundred barrels of unbleached flour. But only when he—

Examiner Sheppard: For some specific purpose?

A. Yes.

Examiner Sheppard: Now, you spoke also in your direct examination of the use which is, I gathered, almost universal, in the manufacture of flour, the use of phosphates?

A. Yes, sir.

Examiner Sheppard: Is there any flour sold in interstate commerce in which phosphate is not used?

A. Yes, sir.

Examiner Sheppard: What is that?

A. Nearly all flour which is consumed in the baking industry, does not have the phosphate in it, and a certain proportion of the flour that is used in the family trade don't have the phosphates.

Mr. Bane: By the baking industry, do you mean the bakers which bake to sell to the trade?

A. Yes the large bakeries. I mean bakeries which produce yeast leavened bread on a commercial scale.

Examiner Sheppard: Now, one more question. You speak of several grindings of wheat to make flour.

A. Yes, sir.

Examiner Sheppard: Am I to understand that wheat is ground as much as fourteen times; in other

words, put through the grinding process as many times as that in order to get the flour from it?

A. Some of it goes through that number of grinds. Perhaps I should try to describe the process a little bit. I can take a half minute and try to do that.

Examiner Sheppard: Go right on and do that. I thought, personally speaking, I thought one grinding of the wheat got all the stuff out of it that you wanted.

A. No.

Mr. Bane: Go ahead and explain it.

Examiner Sheppard: Well, go on and explain it for the record.

A. One grinding of wheat would give you just a mixture of wheat meal, which would be a conglomerate mass of bran, the outer and the inner coats of bran, to which a great deal of flour still adheres, gives you various sizes of flour particles which are called middlings and which gives you some flour which is of a fine enough texture to be called flour. So, therefore, after you grind the wheat the first time, you have to sift that and grade this mixture into your bran, your shorts, three sizes of flour middlings we will say, and the flour. Then the bran and shorts are taken to the second break. This coarser material is the only part that goes to the second break, then the third, then the fourth break, and after each break there is an additional amount of flour middlings obtained from this flour, and after the fourth break the bran is ready for packing for dairy feed, whatever you want to pack for. It does not have any more flour in it.

Mr. Bane: Do not some of the mills use more than four? You mean four in your mill?

A. I was speaking of our mill.

Mr. Bane: Some use more than four breaks?

A. Some mills use six breaks, some use two. In our mill we use four. Now, let us return to the flour particles after the first break, which have been separated out in the sifting operation after the first break. You have

three sizes of flour particles we will designate them as coarse, medium and fine, and these flour particles are reground on separate stands or rolls, and after this regrinding, each type is resifted and some flour obtained from it, and a portion of each of the streams will still be large, too large to be considered as flour, and that has to be reground a second time. So then on these middlings have grinds, beginning with the first grind the second grind, the third grind, the fourth, fifth, sixth, and on up to nine, ten, and after each of these grindings the subsequent bolting or sifting takes place in order to separate from that stream the particles fine enough to be considered as flour, and that material goes to the flour stream and the coarser particles then go on to the next grind, and are reduced further. You see, now, from this process some flour is made on the very first break, but that is a very small quantity of flour.

Mr. Bane: Is not that a poor grade of flour, also?

A. It is not considered the best grade of flour, made on the first break. The flour which is made from the first, second, third and fourth grinds of the middlings, is considered the best flour. So, you see, all flour is not ground fourteen times. It is only that part of the flour which resists the reduction to small sized particles necessary.

Examiner Sheppard: I think I get the idea.

Mr. Bane: In other words, you do not grind the flour like you used to grind meal when you took it to the mill on a mule and took it all back home in a bag.

Examiner Sheppard: I understand. We will take an adjournment until 2:30 o'clock.

(The hearing thereupon adjourned at 12:30 p. m. until 2:30 p. m. this date.)

Docket No. 1601.

Nashville, Tennessee, January 10, 1930.

Met pursuant to adjournment at 2:30 o'clock P. M. Before:

William W. Sheppard, Examiner.

Appearances:

Mr. Baldwin B. Bane, For the Commission.

Mr. Thomas H. Malone, Jr., for the Respondents.

MRS. JULIAN C. GREENE, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Bane.

Q. 1. Where do you live, Mrs. Greene, please?

A. At Number 10 Howard Apartment, on 16th Avenue, South.

Q. 2. In Nashville, Tennessee?

A. Yes, sir.

Q. 3. Do you cook or make bread at home?

A. Well, we have a food shop.

Q. 4. You do?

A. Yes, sir.

Q. 5. What is the name of that food shop?

A. The Dainty Made Food Shoppe.

Q. 6. Where is that bake shop?

A. 1708 21st Avenue, South.

Q. 7. In Nashville?

A. Yes, sir.

Q. 8. In that food shop do you use flour?

A. Yes, sir.

Q. 9. Where the word mill, Mrs. Greene, or the word milling is in the name of a concern that is selling flour, or is on the container in which the flour that you buy is packed, what do these words in the name of the concern indicate to you, as to the character of the concern that put that flour out?

A. Well, I think that it means that they grind the wheat and make the flour.

Q. 10. You think that indicates that concern grinds the wheat and makes the flour?

A. Yes, they are flour mills.

Q. 11. Have you any preference, Mrs. Greene, as to which you would rather buy from, a concern that grinds

the wheat into the flour, packed it and then sold it, or from a concern that bought flour from others who ground it? Which flour would you rather have?

A. Well, I much prefer getting it from the ones that grind the wheat and make the flour.

Q. 12. Why?

A. Well, to be honest with you, I did not know that they blended it in any other way, that there was such mills as blending mills, because I think you would get the better wheat, I imagine—I think they would keep the better grade of wheat to put into their own flour.

Q. 13. You think you would get the better grade of flour from a concern that actually ground the wheat into flour, than from a blender, is that correct?

A. Yes, sir.

Q. 14. Do you know, Mrs. Greene, that any concerns are selling flour that do not grind the wheat into the flour, use the words mill or milling in their names?

A. I do not.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Cross-examine.

Cross-examination by Mr. Malone.

X. 1. What flour do you use, Mrs. Greene?

A. We use Queen of the Pantry.

X. 2. Queen of the Pantry. What else?

A. That is the only flour.

X. 3. Who makes it, do you know?

A. Waggoner & Gates, I think.

X. 4. Where do you buy it?

A. Robert Orr.

X. 5. You buy from Robert Orr?

A. Yes.

X. 6. What effect does the price have to do with your purchases, if any?

A. Well, no, you see we have never considered the price, the difference in the price. In our class of cooking we have to have a high patent flour.

X. 7. I see, and that is a high patent flour.

A. Yes, sir; it is a pastry flour.

X. 8. I see, a pastry flour. And you find that entirely satisfactory for your purposes?

A. Yes, sir; it has been.

Mr. Malone: That is all.

Examiner Sheppard: One question. Who do you buy your flour from?

A. From Robert Orr & Company.

Examiner Sheppard: How does it come?

A. We buy it in barrels, but it is packed in 48 pound sacks.

Examiner Sheppard: And you have noticed the wording on the sack, have you?

A. No, I have not.

Examiner Sheppard: Do you know whether the word mill or milling appears on the sack?

A. No, I do not. I will have to be honest with you.

Examiner Sheppard: All right.
Mr. Malone: That is all.

MRS. R. I. McCLEAREN, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Bane.

Q. 1. Where do you live, please, Mrs. McClearen?
A. 1703 19th Avenue South, Nashville.
Q. 2. Nashville, Tennessee?
A. Yes, sir.
Q. 3. Do you keep house?
A. Yes, sir.
Q. 4. Do you bake bread?
A. Yes, sir.
Q. 5. Are you engaged in any business, Mrs. McClearen?
A. I have my own school of cookery.
Q. 6. You have a school of cookery?
A. And in connection with that, I bake cakes.
Q. 7. In that school do you use flour?
A. Yes, sir.
Q. 8. What does the word "mill," Mrs. McClearen, or the word "milling," when used in the name of a concern selling flour, or when used in the name of a concern under which flour is packed, mean to you as to the character of that concern? What does it indicate as to the character of the concern?
A. Well, do you mean what they do?
Q. 9. Yes?

A. Well, I should think they grind and make flour.

Q. 10. That is, grind the wheat into flour?

A. Yes, sir.

Q. 11. Do you know, Mrs. McClearen, whether or not some concerns that do not grind wheat into flour, but simply blend or mix the flours, use the word "mill" or the word "milling" in their name, in the name under which they sell flours?

A. I don't know it. I have heard it, but I do not know it.

Q. 12. When did you hear that?

A. Oh, just recently I have heard it discussed.

Q. 13. You have just heard it discussed very recently?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Cross-examine.

Cross-examination by Mr. Malone.

X. 1. What flour do you use?

A. Polly Rich flour, put out by the Colonial Milling Company.

X. 2. The Polly Rich and what else?

A. That is all.

Mr. Malone: That is all.

Witness excused.

L. D. WHITING, resumed the stand, and upon further examination, testified:

Cross-examination by Mr. Malone:

X. 1. Mr. Whiting, Ballard & Ballard are members of the Southeastern Mills Association, are they not?

A. Yes, sir.

X. 2. I believe you told us you got your education as a Cereal Chemist in Pennsylvania State?

A. That is correct.

X. 3. In what college did you get your education as a practical miller, if any?

A. I did not take practical milling in any college, except the college—

X. 4. Then, you are not—

Mr. Bane: Except the college of what? Wait a minute.

A. Except the college of experience, in working in conjunction with our own miller.

X. 5. You are not a practical miller, are you?

A. No, sir.

X. 6. You are not a financial expert of the company, either, are you?

A. No, sir.

X. 7. You just run the chemical department?

A. Yes, I just run the chemical end.

X. 8. I see. Now, what about this continuous process of making self-rising flour? Let us get clear on that. Do I understand you, that you feed your mill stream into a batch mixer, and pour the chemicals in and then start the batch mixer, and it is all a non-stop process from beginning to end?

A. The way that we make self-rising flour, and mix the self-rising ingredients into the flour, is this method: The flour comes from the mill in a continuous stream, and this flour is run into a batch mixer, until, let us be specific, until sixteen hundred pounds of flour is in that mixer, at which point—

X. 9. Well—

A. May I continue?

X. 10. Go right ahead.

A. At which point the stream is held up long enough to mix the ingredients into that sixteen hundred pounds of flour. After that has been mixed, that one batch has been mixed, it is dropped into the packer, the slide is closed and the stream is run into the batch mixer a second time, and when sixteen hundred pounds of flour have been put into the batch mixer, the self-rising ingredients are added, and the self-rising flour is mixed. Now, that process of taking flour from the mill stream and making self-rising flour by mixing in the ingredients is a continuous process, in that we do not sack the flour and store it for any time at all, and then dump the flour into the mixer along with the self-rising ingredients and mix the flour. The stream of flour from the mill is held up temporarily and it builds up slightly while a batch of flour is being mixed. This process, however, is continuous, because we take the flour from the mill as fast as the mill makes the flour, and mix the ingredients into it.

X. 11. Now, of course, you are a chemist and understand about those things. I just want you to enlighten me a little on it. I had the idea—correct me if I am

wrong—that the mill stream was a hot, wet stream, and if you dumped these chemical ingredients right into it, it will produce a chemical reaction right then and there. Am I wrong on that?

A. If the stream of flour from the mill is wet enough to cause a chemical reaction in the ingredients when they are added in the mixing process of self-rising flour, there is too much moisture in the flour for the flour to keep, even as a plain flour.

X. 12. I do not think you quite get my question, exactly. Read the question again, Mr. Reporter.

(The question was then read to the witness.)

X. 13. I am talking about the normal mill stream. I am not talking about too much moisture.

Mr. Bane: Just a moment. I think he answered the question and answered fully. He said if the flour is coming from the mill stream is sufficiently moist to produce that effect, it will have too much moisture to be a good flour.

Mr. Malone: Mr. Bane is making a good answer for him.

Mr. Bane: I think he did.

A. A normal amount of moisture will not cause a chemical reaction. It is true, as you said, that flour from the mill stream is warm, I would not describe it as hot. If it is hot, it is not milled in the correct manner and under proper conditions, and if it contains too much moisture to cause a chemical reaction of those ingredients it has got too much moisture in the flour, even to try to put it out as a plain flour.

X. 14. I just want to get the method of Ballard & Ballard Company in mixing self-rising flour which you are describing to me. Does the flour go to a hopper after it comes off the mill stream?

A. I believe I have already stated that the stream of flour from the mill is held up for a sufficiently long length of time to mix a batch, and of course it is necessary to have a container large enough to hold that small quantity of flour which has to be held up while the batch is being mixed.

X. 15. Well, that is the first step. Then, you do run it off into this container, don't you, or hopper? You call it a container?

A. All right, hopper.

X. 16. You do run it off into that?

A. That is right on the mill stream.

X. 17. Well, you run your mill stream into the hopper, don't you?

A. Yes, that is correct.

X. 18. And it stays there what you call a short time?

A. Yes.

X. 19. How long?

A. Twenty minutes. That is a part of the flour for the next mix stays there twenty minutes.

X. 20. Well, now—

A. But the hopper does not contain, however, enough flour to make a batch of flour.

Mr. Bane: To make a batch of self-rising?

A. To make a batch of self-rising flour, and so, after that material is run into the batch mixer for the second batch, the required quantity of flour in that batch mixer must be made up by the flour which continues to come from the mill, right on the mill stream.

X. 21. How long does it stay in that batch mixer when you mix the ingredients with it, before it goes through the elevator and through the reel?

A. We dump the batch mixer directly into the packer and do not run it through an elevator and a reel.

X. 22. Is that the way you make self-rising flour? You do not run it through any reels or bolters at all?

A. The flour has, within twenty minutes or ten minutes just come from the mill and has been bolted, throughout the milling process.

X. 23. And the chemical ingredients you put in there, you never have any strings, particles of wood, anything like that in it, do you?

A. They do, but the chemical ingredients which are put into the flour are—that is a different process from the flour altogether, each chemical ingredient is sifted by itself into a separate drawer, and all strings, lumps, anything like that, that are in them, are taken out of these ingredients separately, before they are put into the mixing device.

X. 24. And the same thing could be accomplished by bolting them with the flour after you put them in the mixer, could it not?

A. It possibly could accomplish that, but not to such a degree, for the reason that any foreign matter, dust, that might be in a mass of strings, anything like that, would be jolted off into your flour. It is better to take them out ahead of time.

L. D. Whiting

X. 25. Now, is it any advantage to make self-rising flour when it is cool, with cool flour?

A. That point was brought up a number of years ago, and we conducted extensive experiments to see just what the effect of different temperatures of the flour had on the mixed self-rising flour. And we had flour that was very cold, and flour that was warm, and we had self-rising ingredients that were cooled to various temperatures, and we mixed those together, and we got good biscuits, as good biscuits from one combination of temperatures as we did from another combination of temperatures. We could not tell any advantage in having flour cold.

X. 26. You think there would be no advantage at all in having any delay, even twenty minutes delay?

A. Please read that question.

(The question was repeated to the witness.)

A. Well, that twenty minutes delay is necessary in the mixing of this flour—

X. 27. You never answer my question, Mr. Whiting. If you would please pay attention to the questions and answer them, we will get through a whole lot quicker, and I think your testimony would read better. Let me make this suggestion.

A. Just read that question.

(The question was again repeated to the witness.)

A. There are several flour mills which make self-rising flour by mixing in the ingredients on—by means of feeders. These feeders feed the separate self-rising ingredients into the stream of flour, which is then mixed in the conveyor and the conveyor acts as a mixer.

X. 28. We will come to that in a minute.

Mr. Bane: Wait.

Mr. Malone: I say we will come to that later.

Mr. Bane: Let him finish.

Mr. Malone: I will give him a chance on that. But, you have not as yet answered my question. I asked for your personal opinion as to whether there was any advantage in a twenty minutes delay.

Mr. Bane: Let us see. He is getting to your question.

A. I am coming to your question if you will give me a half a second or so, please. I was going to say there are mills which do that.

X. 29. Do what?

A. Mix each—mix in a conveyor the flour and feed into that conveyor the separate self-rising ingredients, by means of feeders.

Mr. Bane: That is right on the mill stream?

A. That is right on the mill stream, or right on a stream of flour as it comes from the mill.

X. 30. Now, tell us who they are, before we get away from that?

Mr. Bane: Please let him finish, then we will get to that.

A. All right, sir, I will answer that.

X. 31. You have not answered it.

A. Sir?

X. 32. You have not answered it. Who are they?

A. No, I have not gotten to that yet. In this particular method of manufacture, there is no delay, of even twenty minutes in the making of self-rising flour, and that type of manufacture, is all right, if they want to use that type of manufacture. We do not prefer to use that type of manufacture. The two mills who do that, are the Colorado Mill & Elevator Company, of Denver, and also the Lexington Roller Mills, of Lexington, Kentucky.

X. 33. And you know that is not a good process, don't you?

A. I can also quote you another instance.

X. 34. All right, go ahead.

A. Inglehardt Brothers, Evansville, Indiana, have that process in their mill.

X. 35. And that is the way they put out their self-rising flour?

A. I did not make that statement.

X. 36. Well?

A. I say I did not make that statement.

X. 37. They have or might have victrola in their mill, but that would not have anything to do with this case.

A. Well—

Mr. Bane: Let him answer.

A. They have that process in their mill, and they have made self-rising flour by that method.

X. 38. Then, they could throw it out to the dogs after they made it that way. I asked you if they used it, and got it out under their own brands?

A. It is up to the individual mill owner whether he wants to make it that way or not.

X. 39. Now, since you are qualifying as an expert on milling don't you know that the former secretary of the Southeastern Millers Association has testified in this case that 95 per cent of all self-rising flour is not made on the mill stream, and that he personally does not think it is the proper way to make it?

Mr. Bane: That has not got anything to do with what he has testified.

Mr. Malone: I just want to know whether he agrees with that opinion.

A. You did not ask me that.

X. 40. I do ask you now?

A. I will make the statement that most self-rising flour is made on the batch system of mixing.

X. 41. You have already made that. Don't you know that is the practical way to make it?

A. You asked me for instances where it was made the other way. I gave you instances. There are very few I admit, but most flour is made on the batch system.

X. 42. Do you know personally whether this Colorado mill or the Lexington Mill make in that way the self-rising flour that they put out to the public?

A. I do not know what per cent of flour that they make by the means, or what percentage of flour they make by the other means. I have no way of knowing that.

X. 43. Nor whether they are putting any of that out to the public?

A. No, I do not know.

X. 44. Now is not it a fact that every wheat milling operation is a blending operation?

A. No, sir; every milling operation is not a blending operation.

X. 45. Well, what did I understand you to say on your direct examination about combining these different streams, these different mill streams to get different effects?

A. The combining of the different mill streams to

get various flours of the grade that you might wish to put on the market is a blending operation, but I did not say in my direct examination that the grinding of wheat in any form is a blending operation.

X. 46. Now, wait. I am not as good a reporter as my friend. I have got a note on that. Let me see what you did say. Mr. Whiting, here is my note here, if I am wrong, correct me now: Flour may be blended on the mill stream covering different grades of flour. Now, if you did not say that, I certainly wrote down a whole lot here that I misunderstood.

A. I said that the streams of flour in a mill could be mixed as they were made on the mill stream, into various grades of flour.

X. 47. That is exactly what I asked you.

A. No, I beg pardon. You asked me if all operations in a flour mill were blending operations and I stated that they were not.

X. 48. Well, then, it can be done and it is done all the time, isn't it?

A. Well, every flour mill in the world has to blend the streams of flour they make, which are approximately forty streams of flour in any flour mill, as we have already described after each sifting operation there is a stream of flour which comes from the sifter and of course that goes to the total flour stream. Now, in that respect it is a blending operation.

X. 49. And of course that is exactly what I asked, if every milling operation is a blending operation?

A. No, sir, every milling operation is not a blending operation. The tempering of the wheat itself, is not a blending operation.

X. 50. I am not talking about that. I mean on the grinding or the reduction of the flour, is what I am talking about. Of course hauling the wheat up there in cars on the track is not a blending operation. I did not ask that. It is on the reduction of the flour—

A. The actual grinding of the wheat through the rolls is a grinding operation and not a blending operation.

X. 51. Well, it cannot be carried on without a mingling of these different streams, they must mingle?

A. Certainly.

X. 52. You cannot produce the flour without this blending?

A. No, sir, that is true.

X. 53. How many grades of flour can you make on your experimental mill?

A. We can make one grade of flour, which is a straight grade of flour.

X. 54. Now, do you think you are expert enough to tell us what a patent flour is?

A. I believe I told you this morning of the meaning of the patent flour.

X. 55. I thought I heard you say, but it certainly was my general impression that it was a very general term, and impossible to give any definite meaning to. I just wanted to know if you had found the secret?

Mr. Bane: Did you answer the question?

A. I answered the question this morning. Just as you say, that the term patent does not mean any particular per cent of the flour. I believe I also stated that it might vary from thirty-five per cent of the flour to ninety-five per cent of the flour.

X. 56. Now, right there: What do you mean by thirty-five per cent and ninety-five per cent of the flour? What do you mean by that?

A. Basing the total amount of flour that is turned out from the mill at 100 per cent, the thirty-five per cent means that thirty-five per cent of the total flour is designated as patent flour.

X. 57. Of the total out-put?

A. Of the total out-put of flour.

X. 58. Yes, exactly.

A. Not that this thirty-five per cent of patent means thirty-five per cent of the best grade of flour for that mill.

X. 59. Now, on that question, the best grade, that is the same thing I want to get clear on. Does a patent flour cost any more to make than a clear flour?

A. Every mill in the manufacture of flour makes these various grades of flour. Unless they run the flour into a straight flour and sell it as 100 per cent flour, but the practice of making 100 per cent flour is, however, not universal, at all.

X. 60. Well, then, that is what I had in mind, that patent flour is just one part of the same operation, made from the same wheat and at the same time and by exactly the same process that clear flour and these other grades are made, as you speak of, is not that correct?

A. It is made at the same time, but, as we stated this morning it is usually taken from only a certain part of the wheat berry, and it usually receives different amounts of grinding than the flour which we have called low grade flour.

X. 61. Well, it is all of the same operation, it is all of the same load of wheat, and it goes on the same operation, going at any rate, at one time through the same mill stream?

A. Yes, sir.

X. 62. And the patent is designated by the amount of ash, as you call it, that you take out at the time? I believe you told Mr. Bane that was the principal test, is that correct?

A. I stated that the ash test is one of the tests applied to the flour, and that the amount of ash in the flour was an indication of the grade of the flour.

X. 63. And the short patent—that is the highest—is that the highest grade?

A. Short patent is the highest.

X. 64. The highest grade, that has less ash in it than a clear, or whatever the next grade is, is that correct?

A. That is correct in any one mill, yes, sir.

X. 65. Now, then, this word ash is sort of misleading to me. You do not mean cinders ashes and dirt mixed up with it, do you?

A. No, sir.

X. 66. What do you mean by ash, is not that just the nutritive part of the wheat berry?

A. The ash in the flour is the mineral part of the flour, and it consists mostly of phosphates and potassium.

X. 67. Well, what would be called gluten?

A. Gluten is not a part of the ash, at all.

X. 68. Well, in speaking generally of ash, making the test of the flour, did not you have in mind excluding every thing that would tend to make the flour dry, whether it was gluten or any thing else?

A. Read that question please.

(The question was read to the witness.)

A. In speaking of ash, I had in mind the fact that the ash test is used to give you an indication of the grade of the flour, and flours of equal ash content may run high or low in gluten, depending upon the kind of wheat from which they are made and the determination of the ash content is a separate and distinct determination from gluten.

X. 69. You spoke of the patent mills coming in, or Mr. Bane did, I believe. Is not this the fact—

Mr. Bane: Spoke of what?

Mr. Malone: That patent or Hungarian patent coming in?

A. No, sir, we did not.

X. 70. Any how, I will ask you about it, because it bears on this word patent. We have an expert on the stand, so I am going to ask you about it. Now, is not this a fact, that all flour used to be made with the old stone, mill stones, and that necessarily made a yellower looking flour, had more of the contents of the wheat berry, we will say more gluten and less starch in it, proportionately, and then this Hungarian patented steel roller process was invented, which made a whiter flour; is not that the way the term "patent flour" first came into use, the flour that was made by this Hungarian steel roller process, as compared with the flour that was made by the old stone mill process?

A. The beginning of the use of the Hungarian roller mill system was not the beginning of the term patent flour. It is true, as you say, that flour used to be ground on mill stones, and in that grinding a great deal of the bran was pulverized and the flour was more specky than it is today. Then the Hungarian Roller Mill System was started as you have stated, and that made it possible to grind flour by means of steel rolls. The term patent, however, did not originate from the use of the Hungarian roller system; but it originated from the use of the purifier, which was introduced into this country almost at the same time as the Hungarian system, but a little later than the Hungarian system. This purifier was a machine which was developed out in Minneapolis, and it was a machine which was patented, and the object of this machine was to separate from the middlings some of the branny particles, which subsequently would be pulverized into branny specks, and this machine, since it was called a patented machine, made flour which was whiter than had been made up to that time, and the term patent was therefore applied to flour made on this machine. Now, it is only possible to use this machine on the middlings or lumps of flour, and consequently the term patent finally came to imply something as the best flour from the mill, and then the use of the term was confused to a great extent, and is, as we have already stated, a patent flour does not mean any particular per cent of the flour.

X. 71. Well, now you speak of the best flour. Does that mean that it contains as much nutriment as the flour with more gluten in it?

A. By your question you assume that gluten is the

only nutritive element in flour. As a matter of fact, starch is also a nutritive element, and the fact that a flour is higher or lower in gluten has not any bearing on its total nutritive elements or value. It is true the amount of nutriment received from the nitrogenous content of the flour is lower in the case of low gluten, but at the same time the amount of nutriment that is obtained from the carbohydrates in that flour is higher than that obtained in the case of high gluten flour.

X. 72. Well, it comes down to this, then, that your short patent flour, without using chemical terms, runs to starch, and your flour below that is one which has more of the gluten in it, each one being a nutritive element, is that correct?

A. In any one particular mill, the patent flour is lower in gluten or protein than the lower grades of flour in that same mill, that is true.

X. 73. Now, when the health people insist on whole wheat flour, has that got more starch or more gluten in it?

A. That has the same amount of gluten in it as straight flour, plus an amount of protein from the bran which is ground up there, which is not gluten.

X. 74. I am just using the terms roughly synonymous, I did not set out to be a chemist. I understood from you that the terms are used rather interchangeable.

A. They are in the case of flour, but you cannot say all protein in wheat is gluten, because gluten is that part of the protein which occurs in the flour.

X. 75. Now then, as compared with a patented flour, a whole wheat flour would contain very much more gluten or protein, would it?

A. Compared with a patented flour, a whole wheat flour made from the same wheat, would contain more protein than the patented flour, and I have already stated that a straight flour has the same amount of gluten in it as the whole wheat flour.

X. 76. Now, by a low grade flour, do you mean something that is not fit to eat, something that is unhealthy, something that will kill people, like low grade meat, or low grade eggs?

A. I do not mean by low grade flour that it will kill people, no, sir.

X. 77. Is not a low grade flour a sound flour?

A. A low grade flour may be a sound flour.

X. 78. And it has not a greater per cent in it of these elements we call ash, protein and gluten, comparatively

speaking than the other patented flour, that is correct, is it not?

A. Repeat the question.

(The question was then read to the witness.)

X. 79. Is that correct?

A. That is correct, and it also has in it a higher per cent of fibre, which is an indigestible corbohydrate.

X. 80. You are not a health expert also, are you?

A. No, sir.

X. 81. So, you do not know whether a certain amount of fiber or roughage would be considered a good thing for the digestion, do you?

Mr. Bane: Like gravel for the chicken gizzard.

A. I understand that the use, sometimes, of a certain amount of scratchy material, like bran, is very good for the human system, for the abrasive effect it exerts on the intestines, but I am no expert on that subject.

X. 82. Now, don't your company put out a bran?

A. To be eaten by human—

X. 83. By human beings?

A. Our company does not put out a bran to be eaten by human beings.

X. 84. Do not many companies do it, like you see many people call for this bran in restaurants, and see them bring out a little package of it and people eat it. Do not many milling companies put that out?

A. Was the question, do not many milling companies put that out?

X. 85. Yes?

A. No, sir, many milling companies do not put that out no, sir.

X. 86. Who does put it out?

A. Kellogg Corn Flake Company puts it out.

X. 87. That is a large company, of course, one of the big concerns of the country, is it not?

A. A large cereal company, yes.

X. 88. Does Pillsbury put it out? Do you know?

A. Pillsbury puts out a bran, but, at least I have seen packages of it on the market. That is dissimilar, however, to the Kellogg product.

X. 89. For human consumption, I mean?

A. Yes, for human consumption.

X. 90. Now, you did not tell us the chemicals that are in Agene, this morning?

A. Agene?

X. 91. Yes, I may mis-pronounce it a-g-e-n-e?

A. Agene has nitrogen-trichloride.

X. 92. Let us see if I understand about the action of those things, that is Novadel and Agene. Did I understand you to say that they prematurely bring about a ripening, so to speak, in the flour particles, an aging in the flour particles, or what is it? Tell us?

A. I stated that Agene matures flour at the time that it is applied to the flour.

X. 93. Then, it is matured—

Mr. Bane: Had you finished your answer?

A. I will wait until he asks the next question, I guess.

Mr. Malone: I thought you were through.

A. Go on.

Mr. Malone: If I interrupt you before you are through, tell me. I want to get your answer. I want to give you a full chance. Read the question and answer.

(The question and answer were then read by the reporter.)

A. And Novadel bleaches flour within forty-eight hours after it is applied to the flour, but the maturing effect of Novadel is not as great as the maturing effect of Agene.

X. 94. Do you have any reason in using Agene at your mill do you have any idea of whitening the flour?

A. The Agene process, in addition to maturing the flour also whitens the flour.

X. 95. And it makes it look like a short patent, if it is not a short patent, is that the idea?

A. The use of Agene undoubtedly improves the color of flour, but the use of Agene will not make a short patent flour out of a flour which is a low grade flour.

X. 96. Does it make it look like a short patent flour? Of course we know it will not do that, but will it make it look like a short patent?

A. It will make it whiter in color, and make it have a better baking quality.

X. 97. Will it last as long as unbleached flour after you put it up, and will it stand.

Mr. Bane: Do you mean will bleached flour?

X. 98. I mean will flour treated by agene, which he says immediately matures it, will that last as long after it is matured as unbleached flour, which has not been so treated and has not been matured, but matures itself while standing?

A. No bleaching process on the market—I beg pardon, change that to say, any flour that is bleached with any bleaching process, will not stand or last as long as an unbleached flour, that is true.

X. 99. Now, we talked a good deal this morning, Mr. Bane did and yourself, about these different tests made by chemists for flour. What is the supreme test of flour?

A. The American Association of Cereal Chemists decided within the last three years that the supreme test for flour was the baking test.

X. 100. Exactly. Now, does it require a chemist, a centigrade thermometer and a flask to make the baking test?

A. It requires the Centigrade thermometer, yes. It requires some kind of utensils, whether they be in the form of glass flasks, glass jars, tin buckets, or something. It requires an oven, and it requires baking pans and so on to make the baking tests.

X. 101. Well, you left out the chemist, does it require the chemist?

A. No, a chemist is not necessary to the baking test.

X. 102. And that is the supreme test after all, and is so recognized, is it not?

A. That is the best, the supreme test for flour, that is correct.

X. 103. Now, about the paddle test, has that any value?

A. The paddle test will show you the present color of two flours, if you wish to compare them by that means. It shows you the present color of those two flours.

X. 104. Now, does not it show whether the flour is cleanly milled or not?

A. It is possible from the paddle test, as I stated this morning, to see specks in low grade flour on the paddle test, that is possible.

X. 105. Is not that the most satisfactory and the only satisfactory test as to the dress of the flour?

A. The ash test can also be used as the test for the dress of a flour.

Mr. Bane: What do you mean by the dress of a flour?

A. The dress of a flour—go ahead, you may answer.

X. 106. Tell us what you mean by that?

A. Well, the dress of a flour is the term used to show whether the flour has been cleanly milled, and whether it is free or not from bran specks.

Mr. Bane: Do you mean the appearance of the flour?

X. 107. It is the appearance of the flour?

A. I beg pardon.

X. 108. I say it is the appearance of the flour?

A. Not necessarily only the appearance. The dress of the flour shows whether it has got specks in it or not; that is a term that is used, and a well dressed flour means one that is fairly free from specks; and a poorly dressed flour is one that is full of specks.

X. 109. You can see that with the eye. It does not require an ash test to tell that, does it?

A. That does not require an ash test to see the difference between an extremely well dressed flour and a very poorly dressed flour, or, in other words, a very high grade flour and an extremely low grade flour, that is apparent to the eye.

X. 110. Now, you made a statement this morning that I did not understand, and that is, that a miller could take different grades of wheat or kinds of wheat, and select them in advance and make a more uniform flour than a blender could do by taking the wheat after it had been milled and blending them together. Now, why did you make that statement?

A. Because, it is easier to do that. It is easier to blend them, to blend your wheat before it is ground than it is after it is made into a lot of flour.

X. 111. In other words, here is your wheat, no two grains exactly alike, and you blend a lot of those grains there, they have not been cracked up at all, but you can do that in advance and get a more uniform grade than a man can get by taking those two sets of wheat berries and making them into flour and then blending the products? Now, that is what you say, as I have it, and I do not understand it.

A. A man—a miller can secure various wheats and blend them before milling and make a more uniform type of flour than can be made by a person who buys flour here, there and everywhere, California, Indiana, Pennsylvania, and tries to mix those various grades of flour after they are made into flour.

X. 112. Well, let us leave out the here, there and everywhere, and likewise Siberia and the Artic regions and come down to the question I asked you, whether you, as a miller, can take wheat berries of different kinds and blend them better in advance and make a more uniform product than a man could make from those same two sets of wheat berries by grinding them separately and then undertaking to mix the resulting flour? That is the question I asked and I want you to answer that.

Mr. Bane: You mean grinding the same wheat berry?

A. That question infers that I am a miller, and I have already stated that I am a cereal chemist, but working in conjunction with our miller it is possible to take two wheats which are available on the market and blend them before milling and get a more uniform type of flour throughout the year, than it is for a person to mix two flours after they are milled, because you secure your wheat when it is available, and when it is moving, and the flour after it is milled, may or may not be available.

X. 113. Did not you say this morning that in blending flours you could test the flours and know exactly what you are going to get as a blend, what the resultant is going to be, that it would be the mathematical average of the qualities of those various flours; didn't you say that this morning?

A. I said this morning that the result on the ash of the flour, on the ash of the mixed flours, the blended flour, would be the mathematical average of the ash of the various components of the flour mixture.

X. 114. What about the protein?

A. That would be the mathematical average of the protein.

X. 115. What about the gluten?

A. The same thing applies to that.

X. 116. Well, in that way, of course, it is possible to make a different blend, and a flour with different constituents from any single flour that went into the blend, is not that correct?

A. That is correct. It may be possible to—the blend may possibly be different in its characteristics, such as ash, protein and—

Mr. Malone: Gluten.

Mr. Bane: Moisture.

A. And moisture, than any of the flour that went into that mixture. That is possible, but the result will be the average of the qualities of those flours which went into it.

X. 117. Well, I am not on the question of the average. I am on the point that the resultant, won't analyze the same ash, the same protein, the same gluten, or the same moisture content as any one of the single flours that went into it, will it?

A. It may or it may not, depending upon what that particular set of analytical data are.

X. 118. Exactly. But, in that way you can make a resultant, by putting in flour with an excess, we will say, of protein, and blending that with a flour of an excess of starch, and you can get a flour that has got the elements better balanced than either one of them, cannot you?

A. The flour will have the average of the mixture of the flours.

X. 119. Yes. Now, for instance, let us take a short patent, here is a short patent that runs high in starch and low in protein, and here is another short patent, that comparatively speaking, is the reverse, it runs high in protein and low in starch, that is, for a short patent. Now, cannot you blend those and make a better flour than either one of them? I mean a better balanced flour than either one of them?

A. The flour that is obtained in the mixture of those flours, such as you describe, will be mathematically, the average of the two flours. I do not understand exactly what you mean by the term better balanced.

X. 120. Well, a flour, we will say, ought to have, to be an ideal flour, it ought not to run too much to starch, because you get corn starch if you get all of the protein out of it, you get nothing but corn starch; if you get all of the starch out of it, you get nothing but gluten. Now, then, flour ought to have both elements in it to be fit for cooking, human consumption, nutriment and all that?

A. Yes, sir.

X. 121. That is my understanding.

A. Yes, sir.

X. 122. I am asking you if you have one flour with an excess of the starch and the other an excess of protein, and neither one having those elements which you would want to put out under a good brand for human consumption, if you cannot combine them and make a better flour than either one standing by itself?

A. In the first place, it would be impossible to have

a flour which would run all to starch, because if it ran to starch, it would not be flour, since the Government specifies that flour must contain an amount of protein which amounts to approximately seven per cent.

X. 123. Well, Mr. Whiting, don't let us quibble around, we are just wasting time. I said an excess of starch in one flour and an excess of protein in another.

A. Well, for some purposes a flour with an excess of starch is desirable, and for other purposes it is conceivable that a flour with an excess of protein is desirable. So, if you were to mix the two of them, you would have a flour which would not be as suitable for either of the two purposes as the flours that you started with.

X. 124. And that is the kind of flour that Ballard & Ballard Company puts out, one with an excess of gluten and one with an excess of starch, do they?

A. Not necessarily.

X. 125. Answer the question.

A. Which question, please?

Mr. Malone: Read the question.
(The question was then read to the witness.)
Mr. Bane: He answered, didn't he?
(The answer was then read.)

A. I said, not necessarily.

X. 126. Why does a baker find it necessary to blend flours that he gets from a grinding mill?

A. Some bakers do blend flours that they get from several different mills, and many bakers do not blend the flour. They use one type of flour from one mill, and the reason that some do that—

Mr. Bane: That is, do which?

A. The reason that some of them use one type of flour from one mill, is that they obtain suitable results from such flour in the baking of their bread.

X. 127. And some of them do not obtain suitable results from one flour, and they have to blend two or more, is that correct?

A. I am not prepared to say, since I am not a commercial baker. I have an opinion on the subject, but it is only an opinion.

X. 128. Why are you prepared to say on the other branch, if you are not prepared to say about the bakers?

A. For the reason that we have bakers in Louisville

who use one type of flour and get very good results in the bread that they put out.

X. 129. Well, you are not an expert baker too, are you, Mr. Whiting?

A. I am not an expert commercial baker, no, sir.

X. 130. What do you do with the flour that don't run uniform after you make your baking test?

Mr. Bane: Repeat the question.

(The question was read by the reporter.)

A. If you blend your wheats correctly to start with, and mill those wheats correctly and know ahead of time what baking results you will get from those wheats, the flour will run uniform.

X. 131. Well then, if I understand you, the baking test is just a matter of form, because you know when you mix your wheat, exactly what you are going to get?

A. And the reason for the laboratory is to make sure that the flour will run uniform, and that is where a cereal chemist comes in.

X. 132. Well, if you are sure of it, why do you make the baking test?

A. You bake, for one reason, to check up on that uniformity.

X. 133. Well, there is no use checking up on perfection, is there?

A. No, there is no use to check up on perfection.

X. 134. Well, then, of course the reason you make the tests is because sometimes they do not run uniform; is not that a fact?

A. We make the tests because there is a possibility, that sometimes they will not run uniform. I do not say they do, but I said, because sometimes there is a possibility that they will not run uniform.

X. 135. And Ballard & Ballard in all your eight years has never failed a single time to make an absolutely uniform flour, is that what you want us to understand?

A. No, sir; I did not say that.

X. 136. Well, then, of course they do not run uniform, and cannot run uniform absolutely in this uncertain world. But getting back to my question: What do you do with that flour that don't run uniform; don't you blend that with something and put it back?

A. If by some infinitesimal chance some flour is made which does not come up to the standard, we sell it as low grade flour.

X. 137. You do not run it back on the mill stream?

A. I say we sell it as a low grade flour.

X. 138. You do not run it back on the mill stream?

A. We put it into the low grade flour and sell it as low grade flour.

X. 139. I have asked you twice, but I expect I do not make myself clear: Do you run that back on the mill stream?

A. Well, as I have stated, we make several grades of flour in the milling process, and I have also stated that we mix in any off grade flour, or flour which you say does not turn out uniformly, into the low grade stream of flour, if there is any flour which is not uniform.

X. 140. Well, it took about fifteen minutes to get that, but we got it. It is my information, you can correct me if I am wrong about it, that some mills who do not make self rising flour, have these mixing or blending plants in addition to their regular milling machinery. What about that?

A. Repeat that, please.

(The question was read to the witness.)

A. I do not know.

X. 141. You never heard of any mill putting its flour through one of these mixing or blending machines to get a more uniform quality?

A. I have already stated that the milling process is a mixing of the forty odd streams of flour in any mill, and that is a blending operation. So, they mix those flours to produce the grades which they want to put on the market.

X. 142. Now, we went over all that.

A. Yes, sir.

X. 143. I am on this point, and we have got some testimony in this record, I might tell you to that effect, just for your information.

A. Well.

X. 144. That some people have gone to the expense, some grinding mills have gone to the expense of putting in this blending machinery, separate machinery, and running their flour through that after their regular milling operation, finding in that way that they get a more uniform quality of flour. And I just want to have your reaction to that, if you know anything about that?

A. That may be so.

Mr. Bane: They are blending flours from the same mill, aren't they?

X. 145. You have no separate blending plant in your mill, have you?

A. No, sir.

X. 146. Well, you have a plant for mixing the self-rising flour?

A. We make self-rising flour, yes. It is in the same mill building.

X. 147. Do you ever run your plain flour through that same machinery without the leavening ingredients?

A. We use that same machinery to mix the phosphate into the plain flour, when we make phosphate plain flour, and when we pack plain flour without self-rising ingredients and plain flour not phosphated, we have spouts through which the flour is diverted directly to the packers.

X. 148. Where do you get that idea of phosphating flour? Did not that come from the blenders here at Nashville?

A. I do not know.

X. 149. What other names does the Ballard & Ballard Company operate under?

A. At the present time we operate under only the name of Ballard & Ballard Company.

X. 150. Well, did not you at other times operate under two or three other names?

A. At times in the past we had two other trade names which we used on some brands of flour.

X. 151. What were they?

A. Those names are not in existence now.

Mr. Bane: He did not answer. What were they?

X. 152. What were those names?

A. Those names were Pioneer Mills and O. K. Mills.

X. 153. There was not any separate Pioneer Mills plant at that time, of course?

A. No, sir.

X. 154. Just Ballard & Ballard's plant?

A. Just Ballard & Ballard's plant, with the two trade names, the Pioneer Mills and the O. K. Mills, but that arrangement is not in existence at the present time.

X. 155. I was not asking whether it was in existence now or not, but just asking whether you had done that, and you have answered the question. Are those names on any of your sacks at the present time?

A. All the sacks which leave the mill now, have the name Ballard & Ballard on them.

X. 156. And have any of them Pioneer Mills on them, in addition to that?

A. None of the sacks that leave the mills have Pioneer Mills on them in addition to the Ballard & Ballard Company.

X. 157. What about the O. K. Mills?

A. The O. K. Mills name does not exist on any of the sacks to day, in addition to the Ballard & Ballard Company, as they leave the mill.

X. 158. You say that you have never heard the term Processed flour?

A. No, I do not know what processed flour means.

X. 159. You never heard anybody use that term?

A. I have heard that term used in connection with butter.

X. 160. With what?

A. Butter.

X. 161. All right. I am talking about flour, of course.

A. You asked if I had ever heard that term used and I stated.

X. 162. No, I am talking about flour, and you have not answered. You say you have not?

A. No, sir.

X. 163. You did not attend the hearing in the Milling in Transit Case down here where Ballard & Ballard were very active some years ago? You were not with them?

A. I did not attend that case, no.

X. 164. You do not know whether processed flour was used by the railroad people and others at that time?

A. I don't know.

X. 165. Now, you say the term raw flour means to you, flour that is not cooked?

A. That is correct, it means to me a flour that is not cooked.

X. 166. Well, don't you think it might be used to describe a flour that had absolutely no extraneous elements in it, not even phosphate?

A. Well, I have no means of saying what might happen or what might have happened. I am merely stating that to me raw flour is a flour that is not cooked.

X. 167. Well, what do you mean by plain flour?

A. By plain flour, I mean a flour that has no phosphate acid or salt added to it.

X. 168. Yes, but what about the flour that has the phosphate in it, you call that a plain flour, don't you?

A. Well we qualify that, calling it phosphated plain flour.

X. 169. You mean you always, in writing or speaking of that, and on your containers, you put phosphated plain flour, do you?

A. On the containers, according to the Government rules and regulations on phosphated flour we state the words "phosphate added."

X. 170. Then you do not say phosphated flour, do you? You call it plain or self-rising, don't you?

A. It is not necessary to state on there "phosphated flour." The requirement calls for the words "phosphate added," and in speaking of phosphated flour around the plant we call it phosphated flour, rather than flour phosphate added.

X. 171. Well, Mr. Whiting, you speak of it, don't you, and don't you put it on your containers, as either plain or self-rising, such and such blend; of course, you say "phosphate added," because the Government makes you show that, but don't you put on the container, "Plain flour," such and such brand, self-rising flour, such and such brand?

A. Well, I do not recall any containers which carry the wording "such and such brand of plain flour." In the instance of self-rising flour, we have on the containers, the brand name followed with the words "self-rising flour," which is in accordance with the labeling rules and regulations.

X. 172. In your circulars, and when you write to the trade, do you say, "Mr. Jones, are you in the market for so many cars of phosphated flour"?

A. I do not send out the circulars. And, I do not write to the trade and ask them for orders. That is not in my duties to do that.

X. 173. Well, as a flour expert, don't you know whether it is generally spoken of in those two classes, dealers and everybody else speak of the plain flour or self-rising?

A. Well, that is generally the accepted way to refer to it, plain flour or self-rising flour. I do not know how they refer to it in the letters which they send out to the trade. I am speaking from the view point, the way they speak of it in the laboratory and in the mill. We call it plain and self-rising, as the case may be.

X. 174. Now, let us make a new contribution to the flour nomenclature, and let us call raw flour, flour that

has absolutely nothing in it, not phosphated, anything else, you cannot call it plain flour, because plain flour has phosphate in it. Now, I want to get a third class of flour that has got no chemical element or agent in it at all. Now, then, that is what I mean by the term raw flour, that it has got absolutely nothing in it, and it is distinct from plain flour which may have phosphate in it.

A. That is perfectly all right, for you to refer to it in that way if you so desire.

X. 175. Well, that is the purpose of referring to it, that is just for the purpose of the record, unless Mr. Bane would think we had some kind of savages down here eating raw meat, raw flour, raw eggs, and everything else, that is the sense that it is used in.

Mr. Bane: You do not mean any witness has to agree with you? That is just the way you are using it?

Mr. Malone: He says he thinks it is all right to use it in that way.

X. 176. I believe you testified on your direct examination that it would be impossible to put wheat berries and the leavening ingredients into the conveyor at the same time and make self-rising flour. I believe you testified to that this morning? That is correct, is it?

A. That is right.

X. 177. Do you know how the United States Census Bureau classifies the making of self-rising flour, what kind of process?

A. No, sir, I do not.

X. 178. You do not know whether they classify it as a remanufacturing process?

A. No, sir, I do not know.

X. 179. I understood you to say this morning that the nature of the flour was not changed at all by running it through the self-rising machinery, and by that I mean, not only putting it in the batch mixer, but conveying it by elevators into the reels, and running it through there. Now, do I understand you to say that the nature of the flour is in no way changed by that operation?

A. I stated, and will state again, that the grade and quality of the flour is not changed by mixing self-rising ingredients with it and running it through a reel and the elevator and then packing it. I did say, and I will say again, that the characteristics of the flour are modified to the extent of the addition of the self-rising ingredients; but the grade or the quality of the flour is not changed by that.

X. 180. Well, you are a scientist, aren't you, Mr. Whiting?

A. I am a scientist to the extent that I mentioned, being able to obtain a batchelor of science degree in my agricultural chemistry.

X. 181. I just ask you the question, because you so often failed to discriminate in questions I asked you. I thought accuracy was the great test of a scientific mind. I asked if the nature of the flour was changed. Did I use the word grade or quality?

A. You asked if I stated this morning that the nature was changed. I stated, this morning I stated the quality and grade of the flour was not changed, and if you wish to describe the characteristics of the flour by the word nature, I am perfectly agreeable to use that word and to say that the nature of the flour is modified by the addition of the self-rising ingredients.

X. 182. Well, I am not on that point. I am on the point of whether the nature of the flour, and by nature I mean all of its properties and everything about it, whether the nature of the flour itself, is changed or affected by running it through a self-rising flour mill; that is with the machinery including the reels?

A. The nature of the flour itself, and I believe I quoted your words correctly, is not changed by running it through a self-rising flour mixer, and the—

X. 183. Now—

Mr. Bane: Wait a minute. Let him finish.

Mr. Malone: All right, go ahead.

A. And the mixing in of the self-rising ingredients.

X. 184. Now, we leave out the self-rising ingredients in this treatment, leave that out completely, just down to the flour itself, and I want you to give us your answer on that. Personally speaking, my non-chemical information is very much to the contrary. You run the flour through these reels, and it don't make it fluffier, or with less moisture content?

A. Running the flour through the reels may or may not make the moisture content less. It depends on the relative humidity of the atmosphere on the day on which that operation is executed, and under similar conditions, of relative humidity, it is possible for the flour to increase in moisture content. Now with regard to the fluffier character of the flour, the running of the flour through the reels does, for the time being make it fluffier. Then—

X. 185. Well—

Mr. Bane: Wait. Let him finish.

A. (Continuing) Then it is subsequently run into the packing machine, and the packing machine means to pack the flour and the flour then loses its fluffy physical state which it got when it ran through the reels, and it is packed into as small a compact as possible in a flour sack, and at that point it is not as fluffy as it was when it went through the reels or the sifters.

X. 186. Well, I evidently have a very singular faculty for making myself misunderstood in this case. I intended to ask you, and thought I had asked you several times, whether running the flour through this machinery changed the quality of the flour. Now, I understand you to say it does make it fluffier.

A. It makes it fluffier at that point.

X. 187. I did not mean—

Mr. Bane: Let him answer. Makes what?

X. 188. I just want to let you get the question. I do not mind what you do about it afterwards. You can put arsenic in it afterwards, throw it out in the mud afterwards, I am not talking about that. I am talking about running it through the machine, whether that does not affect the moisture content more or less, according to your humidity, if you want to put it that way, whether it does not give it a fluffier quality when it comes out of that machine? I do not care how you ram it into sacks afterwards.

A. It modifies the fluffy quality of the flour at that point, that fluffiness of the flour at that point, but the grade of the flour is exactly the same as it was before it went through those reels.

X. 189. So, if any miller does that, has that kind of plant and runs stuff through there with the idea of improving the quality of the flour and aeriating it, you think he is just wasting his time and money; is that your idea?

A. Well, after the flour has been milled properly in the first place, running it through an additional string of reels is just wasting time and money.

Mr. Malone: All right.

Examiner Sheppard: Anything else, Mr. Bane?

Mr. Bane: Yes, I just have a few questions I would like to ask you, please, Mr. Whiting.

L. D. Whiting

Redirect Examination by Mr. Bane:

RD. 1. In running the chemical department and laboratory of Ballard & Ballard, you have to and do work in close conjunction with the miller, don't you?

A. Yes, sir.

RD. 2. Something was said about holding up the flour from the mill stream when the flour from the mill stream was run into the mixer for the purpose of preparing self-rising flour. Can you tell us the quantity that collects or that is held up during the time that this already in the mixer is being mixed? What quantity collects? I think you said you put in sixteen hundred pounds in the mixer, didn't you?

A. Yes.

RD. 3. How much is held up, collects in there during the time before you can turn it back into the mixer?

A. That depends upon the number of mixers in operation, and it depends on the flour stream.

RD. 4. Approximately, ordinarily?

A. The number of flour streams used for mixing self-rising flour, approximately, in some cases where the stream is very small, the amount of flour help up in that hopper is correspondingly very small, and where the stream is larger, it is of course somewhat larger in amount. I have never weighed it. I should judge from about two or three barrels to four or five barrels, along there.

RD. 5. What would that be in weight, since you have the other in weight?

A. That would be in weight, two barrel would be approximately 392 pounds, and five barrels would be five times 196, whatever that is.

RD. 6. In other words, you do not collect in that hopper during the time you are holding it up, the full quantity that goes into the mixer?

A. No, sir, it is impossible to hold up that much flour, because the hopper is very much smaller than the hopper in which the flour is weighed into the mixer.

RD. 7. Is it correct, Mr. Whiting, that clear flour from one mill will necessarily have more ash than a short patent flour from another mill?

A. Well, it is not necessarily true that a clear has more ash than a short patent from another mill. It all depends upon the length of the patent in the two mills, and the amount of clear flour, that is spoken of as clear flour.

RD. 8. It may be, might it not, between the two mills that the clear of one mill might really have less ash in it than what is the so-called short patent of another mill, might it not?

A. That condition of affairs is possible, and if you had a clear flour that ran 40/100ths of one per cent ash, you could have a patent flour from another mill than ran .42 or .44 of one per cent ash, that is possible.

RD. 9. And it does happen, does not it, from these same mills that while they take different percentages for clear and different percentages for patent, the clear of one might be the equivalent to what the other calls patent, might it not?

A. Might be equivalent so far as the ash content is concerned?

RD. 10. Yes, that is what I mean?

A. It could be.

RD.11. And actually is, in some instances, is not it, in the flours as between different mills?

A. I know that such is the case, because I know one clear flour which runs 42/100ths of one per cent of ash and the patent flour from another mill, made out of a different wheat can run 45/100ths of one per cent ash.

RD. 12. Is the protein content, taking flour from different mills, necessarily less in a clear flour than a patent flour, or the reverse, less in the patent flour than in the clear flour, necessarily?

A. The protein content of patent flour is less than the clear flour from the same mill.

RD. 13. Yes?

A. But it is possible to have the protein content of a clear flour—it is possible to have that less in amount than the protein content of a patent flour from another mill which makes its flour from a different type of wheat.

RD. 14. And which puts more of the general run of the flour into the patent, is that true? I mean takes a larger per cent for what it calls the patent flour?

A. It would have to be true that the mill which has the patent flour, would have to have a longer patent in order to have that to be true.

RD. 15. They could do that by either having a different type of wheat or taking a longer patent that the mill whose clear flour you happened to be examining, is that right?

A. Yes, sir.

RD. 16. What is the baking test to which reference has been made?

A. The baking test is a general term used to de-

scribe the baking of flour; and the specific type of baking test that is used, of course, has to be adapted to the flour which is being tested. Do you wish me to describe that in detail to you?

RD. 17. Yes, tell me.

A. The baking test for bread, or leavened bread—

RD. 18. What kind of bread?

A. Yeast leavened bread is accomplised by taking a suitable weighed quantity of flour and mixing it with a suitable quantity of yeast, sugar, salt and water, and some shortening if desired—shortening is not necessary—and mixing this list of ingredients into a dough of the correct consistency and then subjecting that mass of dough to fermentation at a fixed temperature for certain lengths of time, and at various points during this fermentation period punching the flour—punching the dough—

RD. 19. Like your mother used to do, a cake with a straw?

A. No, not like that.

RD. 20. How do you punch it, what do you mean?

A. By taking the dough mass out of the container in which it is fermented and putting it on the board and kneading it with the hands until all the carbon dioxide has been excluded or until as much carbon dioxide has been excluded, as possible; then the dough is returned to the container and returned to the constant temperature cabinet, and after the fermentation time has been accomplished, the dough mass is formed into a loaf, or into rolls, whichever the object of the test happens to be, and that dough mass is then proved, which means it is placed in the fermentation or proof cabinet for an additional length of time until it becomes light, and then the pan with the dough in it is put into an oven and baked for a certain length of time at a certain temperature. Now, the weights of the flour, the sugar, the yeast, are of course specific, and the lengths of time and temperature are specific in any baking test that is used.

RD. 21. That is the test?

A. That is the test for yeast leavened bread.

RD. 22. What is the test for bread that is not yeast leavened?

A. The test for biscuit flour and self-rising flour, is to mix a weight quantity of flour containing the self-rising ingredients with a weighed amount of shortening, and a measured or weighed quantity of milk, butter milk or water, until the dough is of the correct consistency, at

which time your dough mass is turned out on the board and rolled to say a half inch in thickness, at which point a biscuit cutter is used to cut out circular discs, which are placed in a pan and put in an oven at a suitable temperature for a suitable length of time, and the result is biscuit.

RD. 23. Cooked biscuit?

A. In a biscuit test, a baked biscuit.

RD. 24. That is the test for flour that is leavened with yeast. Now, what does that test determine about the flour, those tests?

A. Those tests determine whether the flour is going to be suitable for consumption, and check up—

RD. 25. Go ahead, I did not mean to interrupt you. Check up what?

A. Check up the uniformity of the flour with regard to its baking quality, that has been worked for from the very beginning of the milling process.

RD. 26. How does that baking test determine that the flour is uniform or non-uniform?

A. It determines whether the flour is uniform because under set conditions from day to day the results obtained from the baking test should be uniform from day to day.

RD. 27. In other words, if you take what you suppose to be the same grade of flour, coming off your mill, make the baking test over a period of time, the result that you get in the form of baked bread through that period of time would be the same, would be uniform if the flour that went into them is uniform?

A. Yes.

RD. 28. Is that the way you determine the uniformity?

A. That is the way to determine the uniformity, by means of the baking test.

RD. 29. You do not determine the uniformity by merely the baking test, but see how it tastes?

A. Of course the taste is only one thing. The volume and the appearance of the outside of the loaf and the appearance of the crumb of the loaf and the texture of it are all factors that are looked for in judging that uniformity.

RD. 30. In judging whether the flour that went into making it was the same as the flour that you previously used?

A. That is right.

RD. 31. I believe you said you used in your labora-

tory, in addition to the other tests you have described, you use the baking test also?

A. Yes, sir.

RD. 32. That is another one of the tests that you use on flour to keep the various brands of flour which you sell uniform, is that right?

A. That is right.

RD. 33. How long since Ballard & Ballard have used these two what you call trade names, Pioneer Mills and O. K. Mills? You say they do not use them now, but did. How long has that been since they used them?

A. It has been within a year, but I cannot state the exact time.

RD. 34. Within the past year?

A. Yes.

RD. 35. Do you know whether or not there was any such concern as the Pioneer Mills or the Pioneer Milling Company?

A. That name was Pioneer Mills.

RD. 36. Do you know whether there was any such concern as Pioneer Mills, which Ballard & Ballard took over or bought?

A. I do not know, because that name was in existence when I came with the firm.

RD. 37. Do you know whether there was any such name as O. K. Mills or O. K. Milling Company?

A. O. K. Mills.

RD. 38. Do you know whether or not there was any such concern as the O. K. Mills which Ballard & Ballard bought out and took over?

A. The O. K. Mills also was a term in use at Ballard's when I became connected with the firm.

RD. 39. You do not know?

A. I do not know.

RD. 40. Is Ballard & Ballard a very old concern or not do you know?

A. Yes, Ballard & Ballard Company came into existence some fifty years ago.

RD. 41. You referred to the word "processed" and said you did not know what it meant in connection with flour, but did know what it meant in connection with butter. What does it mean in connection with butter?

A. I was asked if I had ever heard the word "processed" used. I stated I have heard of its use in connection with butter.

RD. 42. What does it mean when you say "processed butter"?

L. D. Whiting

A. "Processed butter" as I understand, is butter which has been improved by turning back the off-grade butter and mixing it with good butter and replacing it on the market.

RD. 43. Kind of renovating of the rancid or off-grade butter?

A. Yes, sir. You could call it that.

RD. 44. Twice I noticed you referred in your cross-examination to self-rising flour, or preparation of self-rising flour, you said something about manufacturing flour, and I did not understand whether you used the word "manufacturing flour" to refer to the preparing of a self-rising flour, or to the making of a flour of the wheat berry before the self-rising ingredients were put in. I will ask you whether or not you mean to call the preparation of the self-rising flour, as manufacturing?

A. Well, if I referred to it as manufacturing flour, I did so inadvertently, and we do not consider that as a manufacturing process. It is a mere mixing process, and putting the self-rising ingredients into a flour is not any more a manufacturing process than the house-wife engages in in her own kitchen when she sifts in some baking powder and salt into her own flour.

Mr. Bane: That is all, Mr. Examiner.

Recross-examination by Mr. Malone.

RX. 1. Whether a miller makes the self-rising flour, or a so-called blender, is not it in either case a re-manufacturing process?

A. We consider it a mixing process.

RX. 2. Well you have to get your flour to start with, whether you grind it or whether you buy it, don't you?

A. We obtain our flour by grinding it.

RX. 3. I know, but a man could buy it, could not he? He could buy your flour or anybody else's flour?

A. He has a perfect right to buy flour and mix that as self-rising flour with the necessary ingredients, if he wants to do so.

RX. 4. Of course he has. And you stand on exactly the same basis that he does, in so far as the self-rising flour is concerned, because you get a sack of ingredients, one of which you make yourself and the others you buy, and then put them through a process, whether you want to call it manufacturing, mixing or what, the process is the same in either the so-called mill or the so-called blending plant, is not that correct?

A. I should say we were not on the same basis as one who buys his flour anywhere and makes his self-rising flour by mixing the ingredients into it, since we obtain the flour directly and immediately upon the milling of that flour. We do not have to sack it, store it and subject it to railroad transportation or loss from mice and rats at all.

RX. 5. Well, I was trying to direct your mind to the actual operation, if it is not essentially the same in each case, and don't you use the same machinery with the exception of the elevators and bolting reels, the reals for bolting the flour, don't you use the same machinery, and is not it the same process in each case?

A. The mixer is probably the same in both cases.

RX. 6. That is what I am talking about.

A. Yes, the mixer is probably the same in both instances.

RX. 7. Yes, and the same process is used. You get your flour ingredient in one way, and the so-called blender —I call him a manufacturer of self-rising flour, gets his flour in another way, and both of you buy the leavening ingredients, that is correct, is not it?

A. We buy the leavening ingredients, such as phosphate, soda and salt.

RX. 8. I asked if the blender does not buy them, they do not give them to him?

A. I do not imagine they would.

RX. 9. Of course not. They both buy the leavening ingredients and as to the flour ingredient, you get yours by making it in your own mill, if you do not buy it from some other mill, and the blender gets all of his by buying it from a so-called mill, and when you get your ingredients, you put them in a batch mixer and run them through the machinery to get your self rising flour, is that correct, both of you?

A. We both put them in a batch mixer and mix the ingredients into the flour, and as I understand it, there is an additional elevator and sifter in the case of the blenders, but in our case, that flour goes from the mixer to the packer.

RX. 10. And I believe we agreed that the resultant product has different properties from any one of the ingredients that went in there to make it?

A. The resultant mixture has different properties than any single one of the ingredients that went into it.

Mr. Malone: That is all.

Redirect Examination by Mr. Bane.

RD. 1. Just this; it is a combination of the properties of the ingredients that went into it, to make it, a compounding rather of the properties of the ingredients that went into the mixture?

A. I have already stated that the flour that comes out of the mixer in the process of—after the process—after the mixing has been done, is not changed in the quality or the grade of the original flour, but that the characteristics of the mixture are different than each one of the ingredients that went in there.

RD. 2. The characteristics of the mixture as a whole are different from the characteristics of each of the individual ingredients?

A. That is correct.

Mr. Bane: That is all, Mr. Examiner.

Mr. Malone: That will be all.

Examiner Sheppard: Mr. Bane, do you close your case?

Mr. Bane: I am going to try it right here and see how successful I am. (Consulting with Mr. Malone.)

Mr. Malone: Mr. Whiting, just one question.

Recross-examination by Mr. Malone.

RX. 1. Mr. Whiting, you know the present Secretary of the Southeastern Millers' Association, don't you?

A. Yes, sir.

RX. 2. What is his name?

A. Sample.

RX. 3. Dr. Sample?

A. Yes, sir.

RX. 4. He was here in the court room this morning when you were giving your testimony, wasn't he?

A. Yes, sir.

Mr. Bane: He has not been here this afternoon?

A. No, sir, he has not been here this afternoon.

Mr. Bane: Do you know whether he was here all the morning when you were testifying?

A. I rather thought he was here all morning, this morning. Yes, sir.

Mr. Bane: That is, while you were on the stand?

A. While I was on the stand.
Witness Excused.

Mr. Bane: Mr. Examiner, with the understanding that there are two other short matters which Mr. Malone and I think we can stipulate, Mr. Malone is to let me know whether or not we can at the next hearing, I rest, but with the right to put on one lady witness I had today that did not appear. I will find why she did not appear and try to get her here. I rest.

Examiner Sheppard: Then Mr. Malone, I am perfectly willing to give you tomorrow if you want it.

Mr. Malone: I believe we will facilitate matters by starting Monday, as tomorrow is Saturday and a short day.

(The further hearing of this case was then adjourned at 5:00 o'clock P. M., to be resumed at 10:00 o'clock A. M. Monday, January 13th, 1930.)

Docket No. 1601.

Nashville, Tennessee, January 13, 1930.

Met pursuant to adjournment, 10:00 o'clock A. M. Before:
William W. Sheppard, Examiner.

Appearances:
Baldwin B. Bane, for the Commission.
Thomas H. Malone, Jr., for the Respondents.

LEWIS McBRYAR, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. McBryar, what are your initials?
A. Lewis.
Q. 2. Where do you live, Mr. McBryar?
A. Trenton, Georgia.
Q. 3. What is your occupation?
A. Merchant.
Q. 4. Do you handle flour as a part of your business?
A. Yes, sir.

Q. 5. Plain or self-rising?

A. Yes, sir.

Q. 6. Which do you handle the most of in your territory?

A. Well, more plain, I guess, than we do self-rising.

Q. 7. How long have you been in business, Mr. McBryar?

A. It will soon be eleven years.

Q. 8. What flours have you handled?

A. Principally the Nashville Roller Mills line.

Q. 9. Do you find that flour made by the Nashville Roller Mills, or put out by them, satisfactory to your trade?

A. Yes, sir.

Q. 10. In starting in with that line and continuing it, were you influenced by the fact that they called themselves the Nashville Roller Mills? In other words, did the use of the word "Mills" in their trade name—

A. No, sir.

Q. 11. How do you find that flour runs, as to uniformity?

A. Well, it is as near the same all the time as any flour we have had any experience with.

Q. 12. Have you tried buying flours from mills that grind the wheat into flour?

A. Yes, sir.

Q. 13. And what was your experience there, as to uniformity?

A. It was not standard, it would vary.

Q. 14. Does the price influence you in buying a flour?

A. Yes, sir.

Q. 15. And the quality?

A. The quality.

Q. 16. As to uniformity, and so on?

A. Yes, sir.

Q. 17. And the service that you get from the person you are dealing with?

A. Yes, sir.

Q. 18. And the satisfaction that the flour gives to your trade?

A. Yes, sir.

Q. 19. Well, if the price is right, the quality is right, the service right, the flour satisfies your trade, does it make any difference to you who puts the flour out?

A. No, sir.

Q. 20. Or whether the term "mills" or "manufacturer" is used by that person or not?

A. It does not make a bit of difference.

Q. 21. Do you know, and did you know when you began using that flour, that the Nashville Roller Mills did not really grind it from the wheat?

A. We knew it soon after.

Q. 22. You knew then, that they were what is generally termed blenders?

A. Yes, sir; blenders.

Q. 23. How do your customers ask for flour, do they ask by the particular mill or manufacturer, or do they ask according to brands?

A. Our customers call for it by the brands.

Q. 24. Do the salesmen from the wheat grinding mills ever call on you, Mr. McBryar?

A. Yes, sir.

Q. 25. And try to get you to leave the Nashville Roller Mills?

A. Yes, sir. They try pretty hard to get us to change.

Examiner Sheppard: Mr. Malone, is the Nashville Roller Mills a McCarthy organization?

Mr. Malone: No, sir. That is one of Mr. Tupper's.

Examiner Sheppard: All right. Go ahead.

Q. 26. Do they ever undertake to explain that the blenders do not grind their own wheat into flour? Do you have that argument made?

A. Yes, sir; they present that argument.

Q. 27. Well, what do you say to that, if anything?

A. I tell them that a blended flour is what I want, that is the only kind that will come up to standard and suit the trade all the way through.

Q. 28. In other words it is more uniform?

A. It is more uniform; yes, sir, that is the idea.

Mr. Malone: Cross-examine.

Cross-examination by Mr. Bane.

X. 1. Have you bought flour, Mr. McBryar, from any other concern that you know to be blenders, other than the Nashville Roller Mills?

A. Well, no, not that I know they are blenders.

X. 2. Will you give us the names of the other concerns that you have bought flour from?

A. We have bought flour from the Cleveland Milling

Company the Southland Mill & Elevator Company here, the Lawrenceburg Roller Mills, and I believe we bought flour from the Waverly Flour Mills, but I do not recall any others right at the present time.

X. 3. Have you ever bought any flour from the Snell Milling Company?

A. I have no recollection about it.

X. 4. Or the Royal Milling Company?

A. I have no recollection about it.

X. 5. The Southern Milling Company?

A. No, sir.

X. 6. The Wautauga Milling Company?

A. No, sir.

X. 7. The Southern Flour Mills?

A. No, sir.

X. 8. The F. J. McCarthy Milling Company?

A. No, sir.

X. 9. How did you learn that the Nashville Roller Mills was not a mill grinding the wheat into flour, but was a blender?

A. Well, I do not know that I recall just how I did first learn it.

X. 10. How long had you been buying that line of flour before you learned that it was a blending plant rather than a grinding mill?

A. Well, I would not think over two years, any way.

X. 11. You have been buying it about two years before you learned of that?

A. If I remember right.

X. 12. During that two year period, you thought the Nashville Roller Mills was a concern grinding wheat into flour?

A. Well, I don't remember.

X. 13. Just what did you think about it?

A. It was the first flour we liked.

X. 14. Did not you during that two year period think the Nashville Roller Mills was a concern grinding the wheat into flour?

A. I did not give it any thought.

X. 15. Did you at that time know there was such a concern like that of the blenders? Did you know that the blenders called themselves mills?

A. Well, yes.

X. 16. At that time?

A. Yes, sir.

X. 17. During the two years you were buying from the Nashville Roller Mills?

A. I think so.

X. 18. Do you know? Do you know whether or not you did?

A. Well, I would not say that I knowed.

X. 19. Yes, now, is not it true that up until the time that you learned that the Nashville Roller Mills was a blending concern, that you did not know that the blenders called themselves "mills" is not that correct?

A. Well, I don't know. I had not given it any thought, as grinders or blenders.

X. 20. When you began to deal with a concern, Mr. McBryar, you naturally, and it is in the natural course of events, you formed an opinion in your own mind as to what character of concern you are dealing with, don't you?

A. Well, at that time when we first began handling this line we bought through the Winer Feed Company, jobbers of Chattanooga.

X. 21. You bought from Jobbers?

A. Yes, sir.

X. 22. But it had on the bag "Nashville Roller Mills"?

A. Yes, sir, Nashville Roller Mills.

X. 23. You naturally, and any buyer would naturally form an opinion in his own mind, as to what kind of concern that was putting that flour out?

A. Well, I would have some idea.

X. 24. Certainly you would. And you thought at that time that that concern was a mill grinding wheat into flour?

A. I could not say that I gave it any thought.

X. 25. Do you mean to tell me you are an exception, that you do not do what the buyer usually and ordinarily does, that is you do not form any opinion as to what it was?

A. I understood that, just ordinarily, of course on first thought, a mill, you would have the idea it was grinding the wheat.

X. 26. Grinding the wheat into flour?

A. Yes, sir.

X. 27. And that, of course, is what you thought until two years after you began buying and using the line, you found out differently?

A. Yes, until I found different.

X. 28. Those concerns that you named for me, Mr. McBryar, as concerns from which you had bought flour, or concerns whose flour you had bought, other than the Nashville Roller Mills; do you understand to be mills that grind the wheat into flour?

A. Well, one of them, at least I have understood so.

X. 29. Well, did not you understand the others did?

A. No.

X. 30. I asked you whether you bought from any other blenders than the Nashville Roller Mills?

A. They are the only one I know of.

X. 31. The only one?

A. The Cleveland Roller Mills is the only one I know that grinds.

X. 32. They actually make the flour from wheat?

A. They claim they grind the wheat into flour, and I —I started to say that Lawrenceburg Roller Mills claim they grind the wheat into flour, but I won't say. I don't remember about them.

X. 33. Now, I believe you said the things that influenced you in buying the flour were the price, the quality and the service.

A. Yes, sir.

X. 34. Are not there other things also that influence you in buying, such as the likelihood of the product being one that you can afford to devote your time and attention to building up a demand for in your trade, because you feel from the nature of the concern that is putting the product out, that the product will be one that will continue, that you can continue to handle for quite a period of time, because the concern putting it out is more or less of a permanent nature? In other words does not the permanency of the concern putting the product out have some influence on you in buying? You would not buy and devote your attention to getting established in your trade a product from a concern that was quite likely to, or very probably would go out of business in a short time, would you? Particularly a staple product like flour?

A. Well, the price and quality and service are the main things.

X. 35. You are also interested in knowing the nature of the concern, the character of it?

A. Of course if I knowed a concern would be out of business next month I might not consider it.

X. 36. Don't you make some investigation to determine what character of concern is, you are attempting to establish a demand for its product in your trade?

A. Yes, we would want to know that.

X. 37. Certainly, you do. That is bound to have its influence, isn't it?

A. Then, we do not pay as much attention to that as we do to the price, the quality and the service.

Lewis McBryar

X. 38. Does not the guarantee on the product, in the case of flour, the guarantee on the bags, does that have some influence on you in buying the flour?

A. Oh, yes.

X. 39. In fact, there are many other things besides price, quality and service that enter into, and influence the man in business for himself, in buying flour?

A. Yes, sir, I suppose there could be other things.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Anything else?

Redirect Examination by Mr. Malone.

RD. 1. You say that the first or ordinary meaning of mill would be a grinder. Don't you understand that a mill can be something else than a grinding concern?

A. Sure, yes, sir.

RD. 2. A manufacturing concern is a mill?

A. Yes, sir, a saw mill, a planing mill, they do not grind.

RD. 3. And cotton mills do not grind, steel mills do not grind?

A. No, sir.

RD. 4. You were asked something about the permanency of the concerns from which you are buying. Take a concern which goes on for ten or eleven years, giving you a satisfactory product to your customers at a fair price, and giving you good service, that is sufficient for you, is not it?

A. Yes, sir; that is sufficient.

RD. 5. So, are the women the main buyers of flour in your territory, from the retailer?

A. No, I guess the men buy more flour than the women do in our territory. You see we have a country trade, and the men come in from the country.

RD. 6. It is not like the city?

A. No, sir, it is not like the city trade.

Mr. Malone: That is all.

Recross-examination by Mr. Bane.

RX. 1. Don't the women come in with the men?

A. Some times.

RX. 2. They generally come in on Saturday?

A. We do not have many women from the country. But right in the town, the little town, why the women come in; but from the country the women don't come in.

RX. 3. In the little town proper, the buying is mostly done by the women?

A. Yes, sir.

RX. 4. What is the size of the town of Trenton?

A. I think it is called three hundred.

RX. 5. What do you understand the nature of a concern to be that calls itself a manufacturer?

A. I don't know that I have ever heard anybody call it just a manufacturer.

RX. 6. All right, sir, if a concern did call itself a manufacturer of flour, what kind of concern would you understand that to be?

A. Well, I had not given that any thought. I don't know what impression I would have on it.

RX. 7. Give it a little thought now?

A. I guess I would just figure that they were—well, I don't know what I would think.

RX. 8. Would not a manufacturer of flour, Mr. McBryar, mean one who took the wheat and made it into flour; is not that all that it could mean?

A. Well, I don't know whether it could mean any more or not.

RX. 9. So far as you know, that is all it could mean, is not it? That is the way manufacture flour, isn't it?

A. Well, I could not say. I do not know.

RX. 10. Is not that the way you manufacture flour?

A. Then I would think that they could take different ingredients, the soda, salt, the flour, the phosphate and so on, what it takes to make self-rising flour, and put that all together, that would be the manufacture in a sense, would it not?

RX. 11. Would that be manufacturing flour?

A. It appears that way.

RX. 12. That would be manufacturing flour, in your opinion? You think that would be manufacturing flour?

A. I would have that impression of it, yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Mr. Malone: All right.

Examiner Sheppard: You may be excused, Mr. McBryar.

Witness excused.

H. T. MOBLEY was thereupon called as a witness, and, having been duly sworn, testified as follows:

H. T. Mobley

Direct Examination by Mr. Malone.

Q. 1. Your name is H. T. Mobley, I believe?
A. Yes, sir.
Q. 2. What is your occupation, Mr. Mobley?
A. Merchant.
Q. 3. Are you a wholesale or retail merchant?
A. Retail merchant.
Q. 4. Where do you do business?
A. Jefferson, Georgia.
Q. 5. In what part of the state is Jefferson?
A. That is in the northeastern section of Georgia?
Q. 6. Do you handle plain or self-rising flour?
A. Both.
Q. 7. Which do you handle the most of in your section?
A. I imagine our trade runs about fifty-fifty, something like that.
Q. 8. What flours have you handled?
A. Well, we have handled the Watauga Milling Company's product more largely than any other brand for the last several years.
Q. 9. How long have you been in business, Mr. Mobley?
A. Thirty-two years.
Q. 10. And about how long have you been handling Wautauga Milling Company's flours, if you recall?
A. I think about six or eight years. I could not be positive.
Q. 11. Has that flour given satisfaction to your trade?
A. Yes, sir.
Q. 12. How have you found the flour made by the Wautauga Mills to run as to uniformity, compared with flour you buy from wheat grinding mills?
A. We have found it runs equally as satisfactory, I suppose more so.
Q. 13. Have you had any trouble with flour purchased from wheat grinding mills, that you recall?
A. Yes, sir.
Q. 14. In what respect?
A. Well, sometimes we have flour from mills that will run dark, or be inclined to be sticky, or may be a little onionie, or a garlic taste.
Q. 15. You have handled soft-wheat flour, I take it, when you buy from the mills, largely?
A. Largely, yes, sir.

H. T. Mobley

Q. 16. And that is subject to this garlic getting in the crops, occasionally?

A. I understand it that way, yes, sir.

Q. 17. And that affects the quality of the flour?

A. Yes.

Q. 18. Does the price influence you in buying flour?

A. Yes, sir.

Q. 19. And the quality?

A. Yes, sir.

Q. 20. The service that you get from the concern?

A. Yes, sir.

Q. 21. The satisfaction to your trade, your customers?

A. Yes, sir.

Q. 22. Now, these things, are they or not the principal things that influence you in buying flour?

A. The price, the quality influence us very largely.

Q. 23. There may be other elements, but those are the controlling elements?

A. Yes, sir.

Q. 24. And the satisfaction to your trade?

A. Yes, sir.

Q. 25. In buying flour as a merchant, are you influenced by the fact that the concern may or may not use the word "mills" or "milling" in its trade name?

A. No, sir.

Q. 26. Or put on the container or on the literature, "manufacturer of flour"?

A. No, sir.

Q. 27. Do you believe that the Wautaga Milling Company grinds wheat?

A. No, sir; I understand that they do not.

Q. 28. You knew they were blenders when you were dealing with them?

A. Yes, sir.

Q. 29. How do your customers buy flour?

A. Our customers are influenced by the quality and price just as we are.

Q. 30. And do they call for a particular brand?

A. Yes, sir.

Q. 31. In other words, the house-wife buys flour and likes it, and then comes back and asks for that brand.

A. That is the idea.

Q. 32. Do the salesmen from the wheat grinding mills ever call on you?

A. Yes, sir.

H. T. Mobley

Q. 33. Is there or not a keen competition between them and the so-called blenders?

A. Some competition, yes, sir.

Q. 34. Do they explain or try to explain to you that the blenders do not grind their own flour?

A. They use that argument.

Q. 35. That argument does not prevail with you, I believe you say?

A. No, sir.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. Mr. Mobley, how long have you known that the Wautaga Milling Company did not grind the wheat into the flour that it sold?

A. I have known it ever since I commenced to handle their product.

X. 2. How did you learn it?

A. I learned it through jobbing salesmen, mostly, and millers.

X. 3. Millers?

A. Yes, sir, millers.

X. 4. When you first bought from the Wautaga Milling Company you knew that it did not grind the wheat into the flour that it sold, is that correct?

A. I possibly could not say it, that I knew it the first order I bought, but I found it out soon after that.

X. 5. You soon learned of it afterwards, as you have told us?

A. Yes, sir.

X. 6. When you first heard of the Wautaga Milling Company, what character of concern did you think it was?

A. I took it for granted they were good people.

X. 7. Yes?

A. I had no way of knowing absolutely.

X. 8. All right, sir. What character of concern did you think it was, as to the kind of business it carried on?

A. Well, I thought they were good people.

X. 9. You have told us that, but that does not answer the question, Mr. Mobley. What character of concern did you think it was, the nature or kind of business did you think it carried on?

A. Well, I thought they were producers of flour.

X. 10. All right, sir, what do you mean by producers of flour? Is there any way to produce the flour, except to grind the wheat into flour, that you know of?

A. I might state that I knew they were shippers of flour.

X. 11. Yes, but that still does not answer my question, if you please, Mr. Mobley. When you first heard of the Wautaga Milling Company, what nature of concern, what character of business did you think it carried on? Did not you think that it was a concern grinding wheat into flour and selling the flour?

A. I might have had that idea.

X. 12. Did you not have it, without the might?

A. I did not give it any serious consideration then.

X. 13. But, did not you think that was what it was?

A. I suppose I did.

X. 14. You know you did, don't you?

A. But, it was a mighty little time until I learned that they were not millers.

X. 15. Yes, as you have told us here.

A. That is right.

X. 16. The time you first heard of them, you did not know, did you, that concerns blending flour called themselves mills or milling companies, did you?

A. I think I knew of it.

X. 17. You think you did at the time you first heard of it?

A. Yes, I knew there were such concerns.

X. 18. You what?

A. I knew there were concerns that blended flour, of course.

X. 19. But, did you know that those concerns called themselves mills or milling companies?

A. Yes, I knew that.

X. 20. At the time you first heard of the Wautaga Milling Company?

A. Yes, sir.

X. 21. You knew that at that time?

A. I don't know that I knew that the Wautaga Milling Company did not grind.

X. 22. I did not ask that. I asked if at the time you first heard of the Wautaga Milling Company, you knew there were concerns that merely blended the flour?

A. Yes, sir.

X. 23. That did not grind the wheat?

A. I knew that, yes.

X. 24. That called themselves mills or milling companies?

A. I knew that, yes, sir.

X. 25. What other concerns do you buy flour from, other than the Wautaga Milling Company?

A. We bought considerable flour from the Mountain City Mills.

X. 26. The Mountain City Mills?

A. Chattanooga. The Roanoke City Mills, Roanoke, Virginia.

X. 27. All right, sir.

A. The Atlanta Milling Company—I don't know that that is the style of the Atlanta—I believe it is the Atlanta Milling Company, and quite a number of others that I could not recall just at this minute.

X. 28. Bought any from the Nashville Roller Mills?

A. No, sir.

X. 29. The Cherokee Mills?

A. No, sir.

X. 30. The Royal Milling Company?

A. No, sir.

X. 31. The Colonial Milling Company?

A. No, sir.

X. 32. The Modern Milling Company?

A. I think I have had some from the Modern Milling Company, yes, sir.

X. 33. The Modern Milling Company?

A. I am not sure about that, though.

X. 34. You think you have?

A. I don't do the buying in my grocery department in recent years, yet I try to do the buying.

X. 35. Oh, but you try to look after the out-go?

A. I keep tab on it pretty well, but I cannot remember all these different mills.

X. 36. How long has it been since you have attended to the buying for your company, Mr. Mobley?

A. I help with it now. I usually o.keh orders where they amount to very much, but just little current orders I do not always pass on them. I usually know about it.

X. 37. Do you remember whether or not you bought any from the Southern Flour Mills?

A. No, sir; I don't remember.

X. 38. Do you remember whether you have bought any from the Southern Flour Mills?

A. I have had some from them, yes, sir.

X. 39. Is the Mountain City Mills a blender or a grinder?

A. I understand that they are grinders.

X. 40. Is it a large mill or a small mill?

A. I could not tell you.

X. 41. Is the Roanoke Mills a blender or a grinder?

A. They are grinders.

X. 42. And the Atlanta Milling Company?

A. Now, I am under the impression that they grind their own wheat. They may blend some. I could not tell you.

X. 43. The Modern Milling Company, is that a grinder or a blender?

A. I don't know, sir.

X. 44. That is located here in Nashville, is not it?

A. Yes, sir.

X. 45. You do not know which it is?

A. Blenders, I think.

X. 46. But you do not know which it is?

A. No, sir, I could not say.

X. 47. The F. J. McCarthy Milling Company, is that blenders or grinders?

A. I think they are blenders.

X. 48. Located in Nashville?

A. Yes, sir.

X. 49. Do you know whether they are blenders or grinders?

A. No, sir, I could not say.

X. 50. Then, there are at least three concerns that you have bought flour from in Nashville, the Wautaga, Modern Milling Company, and F. J. McCarthy Milling Company; is that correct?

A. Yes, sir.

X. 51. One of them you know to be a blender, that is the Wautaga Milling Company; the other two, the Modern Milling Company, and F. J. McCarthy Milling Company, you do not know whether they are blenders or grinders?

A. The McCarthy Milling Company are blenders, I think.

X. 52. But, you do not know?

A. I rather think they are blenders.

X. 53. But you rather think the Modern Milling Company is a blender, too?

A. Yes, sir.

X. 54. But you are not sure?

A. Yes, sir.

X. 55. Now, you said, if I understand you correctly on direct examination, Mr. Mobley, that you had trouble with some flour from some wheat mill, or some mill grinding wheat into flour. What mill was that?

A. The mill, I had trouble with the Mountain City Mills.

X. 56. In other words, their flour was unsatisfactory?

A. Yes, sir.

X. 57. Any other?

A. I had some trouble with the Roanoke Mill, although I am using some of their goods now.

X. 58. In other words you had trouble with just one lot of it?

A. Well, one lot in particular, yes.

X. 59. They made that all right, adjusted it satisfactorily, did they?

A. No, sir, they did not give us any adjustment.

X. 60. Did you try to do it?

A. Well, they just explained by saying that they ran into a little bad lot of wheat, and would do better.

X. 61. I am surprised at those Virginia folks, that they did not adjust that with you. They must be run by a lot of Yankees. Have you had trouble with the flour from some blending concern also?

A. I do not recall that we have had trouble with the Wautaga's account at all.

X. 62. You never had any trouble?

A. Never had to ship any back.

X. 63. You never had any that you had an adjustment made on, because it was not up to standard, was not satisfactory?

A. Possibly about five or six barrels at one time.

X. 64. That was not satisfactory?

A. Low grade flour, in the self-rising goods.

X. 65. It was not what you ordered and they made an adjustment on it?

A. They made a little adjustment.

X. 66. Did you ever have any trouble with flour from the Modern Milling Company?

A. No, sir.

X. 67. The F. J. McCarthy Milling Company?

A. No, sir.

X. 68. Mr. Mobley, if you please, do you come in contact with your trade; that is, those who buy from you?

A. Yes, sir.

X. 69. Do you wait on them, serve them?

A. Yes, sir.

X. 70. Do you have some idea of what their desires and wants are, with reference to a flour?

A. Yes, sir.

H. T. Mobley

X. 71. Don't you know that some of your trade have quite a prejudice against what is termed blended flour?

A. No, sir.

X. 72. They do not?

A. No, sir.

X. 73. Does your trade know, Mr. Mobley, that it is buying flour from a blender rather than from a mill, when you sell them Wautaga Milling Company's goods, or goods marked with the Wautaga Milling Company's name?

A. I do not think that would influence them at all.

X. 74. They do not know that this is flour from a blender, do they?

A. The average customer wants a good flour and at a moderate price.

X. 75. They want that. We all want to get the very best for the cheapest price we can.

A. That is the main element with flour, if you give them a piece of goods that suits them, they will come back for more.

X. 76. Will you answer my question, Mr. Mobley. I do not doubt that is the general human characteristic. Do your customers know when they buy flour, that has the Wautaga Milling Company name on it, that they are buying flour from a blender and not from a concern that grinds the wheat into flour?

A. I do not think that they stop to figure on that.

X. 77. Answer my question, whether you think they do or not? In your opinion, do you think they know they are buying flour from a blender? Can you answer that yes, or no?

A. I don't think they know.

Mr. Bane: That is all, Mr. Examiner.
Examiner Sheppard: Any thing else?

Redirect Examination by Mr. Malone.

RD. 1. Are the customers in your territory generally men or women, Mr. Mobley?

A. My customers are largely men. We serve the farming trade.

RD. 2. And they come in from the country and the wives, the women and mules stay at home as the old saying is, and the men and horses come to town?

A. Yes, sir.

RD. 3. Is it generally known that the flour concerns here in Nashville are blenders?

Mr. Bane: I object to that, Mr. Examiner. There is nothing shown by which this man could testify to what is generally known, no foundation laid to show he has any general knowledge whatsoever.

Examiner Sheppard: Pretty broad, Mr. Malone.

RD. 4. The people don't know where the flour is made, do they?

A. No, sir.

RD. 5. The people coming into your store, do they know where the flour is made?

A. No, sir.

RD. 6. Well, what about the trade, the merchants?

Mr. Bane: I object to that on the same basis. No foundation has been shown to presume even, that this man has any general knowledge of what the retail merchant understands, outside of his own business.

Mr. Malone: I am asking about his own section.

Examiner Sheppard: I will let him testify as to his general knowledge of the trade that does business with him.

Mr. Malone: Well, he is a retailer, you see. I was asking him about the merchants in that territory, if he knows.

Mr. Bane: No foundation has ever been laid to show that he knows any other merchant in the United States.

Mr. Malone: That is all. Standing aside.

Mr. Bane: One question. Mr. Mobley, about how big a town is Jefferson, Georgia?

A. About two thousand.

Mr. Bane: About two thousand. That is all.

Witness excused.

J. W. COOK, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Is this Mr. J. W. Cook?

A. Yes, sir.

Q. 2. What is your occupation, Mr. Cook?

A. Farming and merchandising.

J. W. Cook

Q. 3. What is your residence?

A. Williston, South Carolina.

Q. 4. Do you handle flour in your business?

A. Yes, sir.

Q. 5. Plain or self-rising, or both?

A. Well, we handle a little plain, but very little plain, mostly self-rising.

Q. 6. The call in your territory is mostly for self-rising?

A. Yes, I guess I use twenty-five barrels of self-rising flour to one barrel of plain.

Q. 7. Whose flour have you been handling, Mr. Cook?

A. Well, I have almost handled the Wautaga Milling Company's and J. F. McCarthy Milling Company's flour, exclusively, almost, for the last seven or eight years, something like that.

Q. 8. Has that flour been satisfactory to your trade?

A. Yes, sir.

Q. 9. Were you and are you influenced in buying flour, by the use of the word "mills" or the word "milling" in the name of the company, or the word "manufacture" in its literature or on its containers?

A. No, sir.

Q. 10. Well, what does influence you in buying flour?

A. Quality and price.

Q. 11. And satisfaction to your trade?

A. Satisfied customers, yes, sir.

Q. 12. If the price is right and the quality is right, and you get good service, and if your trade is satisfied, then I understand you, the name of a concern, or whether they call themselves manufacturers cuts no figures at all?

A. None at all.

Q. 13. Do you know that the Wautaga Milling Company and what did you say?

A. F. J. McCarthy Milling Company.

Q. 14. And the F. J. McCarthy Milling Company, did you know, and have you known that they are blenders?

A. I have known it all the time.

Q. 15. How do your customers ask for flour?

A. By the brands.

Q. 16. By the brands?

A. Yes, sir.

Q. 17. Who does most of the buying in your territory, the men or the women?

A. Well, I guess the men buy the most of it.

Q. 18. You have a country store?

A. Well, no, sir, I am in town, but I have a large country trade which comes in from the country.

Q. 19. Do the salesmen from the wheat grinding mills ever call on you?

A. Yes, sir.

Q. 20. What do they say about certain mills being blenders, or not?

A. Well, I don't know. They will acquaint you with the fact that a whole lot of the mills or manufacturers of flour in Nashville are mixers. They will tell you that. I have had them to tell me that lots of times.

Q. 21. That the Nashville producers are largely mixers?

A. Largely mixers.

Mr. Malone: All right, cross-examine him.

Cross-examination by Mr. Bane.

X. 1. You just about live the ideal life, don't you, Mr. Cook, a country home and the farm—I mean a town home and a farm?

A. I do not know, sir. I work pretty hard, if you call that an ideal life. I have to hustle.

X. 2. Yes, a country home and a town house?

A. Well, I have got a farm. I have also got a residence in town.

X. 3. Yes, a mighty ideal way to live? How long have you been handling the Wautaga Milling Company's product, did you say?

A. I do not know exactly, it must have been six or eight years; I have been in business, oh, something over ten years, and it was not very long, some two or three years before I got started up with them.

X. 4. How long have you handled the F. J. McCarthy Milling Company's product?

A. Well, I have handled that I expect four or five years. I think I have always had them ship it in with the Wautaga brand, when I would get a car of flour, put it in the same car, to get both brands.

X. 5. It would come from both concerns in the same car?

A. The flour would come from both concerns in the same car.

X. 6. Of course, you would do that to get the brands of the two concerns?

A. Yes, sir.

X. 7. When did you learn that the Wautaga Milling Company did not grind the wheat?

A. Why I have known that all the time. The salesman from the mills acquainted me with that fact before I ever bought a barrel from him.

X. 8. He told you that?

A. Just merely in talking, like they come in the store, we would talk with them, and they always told me. I have had lots of them to tell me that Nashville was mostly a mixing town, that there was not much real milling done here.

X. 9. These salesmen told you, or the salesmen of the mills, told you that after you had received some quotations from the Wautaga Milling Company, and you told them of those quotations when they called, is that correct?

A. Well—

X. 10. Is that the way they happened to tell you about that?

A. I don't know just how many people. You know just how they come in the store and they get to talking, and talk about everything, and that was one of the topics of the conversation.

X. 11. Is not it true the way that conversation came up and the salesman told you that the Wautaga Milling Company was a mixer and not a grinder, the result of your telling them of the quotations you had received from the Wautaga Milling Company?

A. I guess it was, for the simple reason I was figuring on buying some of their flour, and I had gotten their quotations from them several times, and they acquainted me with those facts before I bought any.

X. 12. That is it, you told them you had received the quotations from the milling concern in Nashville, called the Wautaga Milling Company?

A. Yes, sir.

X. 13. And then they told you it was a mixer and did not grind the wheat into flour?

A. That is right.

X. 14. The same is true from F. J. McCarthy?

A. I never did buy from F. J. McCarthy Milling Company. I buy their brands through the Wautaga Milling Company.

X. 15. You have gotten the F. J. McCarthy Milling Company product through the Wautaga Milling Company?

A. Yes, sir; I have had them to ship it in the same car.

X. 16. You have handled the product of those two concerns in Nashville?

A. Yes, sir.

X. 17. Have you handled the product of any other concern in Nashville?

A. No, sir, not in Nashville.

X. 18. Have you handled the product of any other blending concern, anywhere?

A. Well, I don't think so. I think most of the other flour I have bought has been from millers.

X. 19. All right, from what other concerns have you bought?

A. I have bought from the Clark Milling Company of Augusta, Georgia.

X. 20. Any one else?

A. Allen Milling Company in Columbia, the Albermarle Milling Company of Albermarle, North Carolina. I have bought flour from some jobbers, I don't remember the names right now of the mills.

X. 21. That was mill flour?

A. Yes, sir.

X. 22. How large a town is Williston, South Carolina?

A. We have around a thousand, maybe a little less than a thousand, between nine hundred and a thousand.

X. 23. The situation, Mr. Cook, down in your country and in Georgia, must be somewhat different from that that exists in the farming communities in my section. You and the other two gentlemen who have testified before you, testify that the men come in town and do the buying and the women and mules stay at home. We have country people around my section who have an awfully hard time leaving the women at home on the day they come to town. Don't they have some trouble around your home, that is, don't the women come to town?

A. You know, I have a big darkey trade too, one reason—I reckon I answered that right—but lots of times the wives are with them when they buy flour. I just said the men, of course the women generally are with them, but the men do the buying.

X. 24. He pays for it?

A. He pays for it.

X. 25. But the women do the ordering in the grocery line?

A. It is largely that way, I guess. In the town, of

course I have a large telephone trade, you know, telephone in the orders and in that case the women telephone in.

X. 26. In the country trade the women generally do the ordering of the groceries and the men do the paying?

A. I don't know, they come in and call for it, and I give it to them, and they pay for it. I don't know which you would term to be the one buying.

X. 27. But they come in.

A. Now, you can consider that as you like.

X. 28. What percentage of your trade, Mr. Cook, is with negroes, darkies as we call them?

A. I don't know that I could give you that accurately.

X. 29. About seventy-five per cent?

A. Hardly that large.

X. 30. About seventy per cent?

A. May be sixty per cent darkies.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

RD. 1. How do you find the products that you have bought from the Wautaga Milling Company and F. J. McCarthy Milling Company, run as to uniformity?

Mr. Bane: I object to that, Mr. Examiner. It is not proper redirect examination; and secondly, I have not objected to it before, but the quality of the flour is not in issue here, as I have repeatedly said. I have let him go into that.

Examiner Sheppard: I want to caution you two right now. I want to keep out of the record all reference to the quality of the flour. I do not intend to make any finding on that. The question here, Mr. Malone, as you well know, is a question of whether or not a certain bunch of manufacturers, or a certain bunch of men who are engaged in the milling or mixing business, whether certain words are used by them, and I do not want to go into the quality of the flour at all. I want to save the respondents money, on this record, as well as the government.

Mr. Malone: Now, the purpose of that question, Mr. Examiner, Mr. Bane was allowed to prove by some of his witnesses that they preferred the wheat mill because they got a more uniform quality. Now, if this is going out, all that should be stricken from the record.

Mr. Bane: When I asked them why, I was establishing the reason or the fact that actuated them in buying it, because they thought they were getting the more uniform quality they said. I made no effort whatsoever to establish from them that they had had experience with blended flour, or had experienced with flour that came from a mill that ground the wheat.

Examiner Sheppard: Go back and repeat the question.

(The last question was read.)

Examiner Sheppard: I will let him answer that question now, but hereafter we will make no reference as to the quality.

A. It ran good, had no trouble.

Mr. Malone: That is all.

Witness excused.

S. L. SHERRILL, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Sherrill, this is Mr. S. L. Sherrill, I believe?

A. Yes, sir.

Q. 2. Where do you live, Mr. Sherrill?

A. Hartsell, Alabama.

Q. 3. Are you a merchant?

A. Yes, sir.

Q. 4. Do you handle flour?

A. Yes, sir.

Q. 5. What kind, plain, or self-rising, or both?

A. We handle about ninety per cent plain, ninety to ninety-five per cent, I guess.

Q. 6. What part of the state is Hartsell in?

A. North Alabama.

Q. 7. And you do not handle so much self-rising in your trade?

A. Very little in my trade.

Q. 8. Where have you been buying your flour, Mr. Sherrill?

A. Well, for the last, oh three years I guess, from the Wautauga and McCarthy Milling Company, J. F. McCarthy Milling Company.

S. L. Sherrill

Q. 9. Of Nashville?

A. Yes, sir.

Q. 10. Has that flour been satisfactory to your trade?

A. Yes, sir it has been satisfactory.

Q. 11. Are you influenced by the word "mills" or the word "Manufacturer" in the maker's name in buying flour?

A. No, sir, I am not.

Q. 12. What does influence you in buying flour?

A. Well, it is the price and quality and the satisfaction that it gives, and service.

Q. 13. Price, quality, satisfaction to your trade and the service that you get?

A. Yes, sir.

Q. 14. Are those the principal things that control?

A. That is the principal controlling factors.

Q. 15. If the price is right, the quality is right, the service is right, and the flour is satsisfactory to your trade, it makes no difference to you, as I understand you, whether the man uses the word "mills" or "manufacturer" or not in connection with his name or business?

A. It does not make any difference.

Q. 16. How do your customers ask for flour?

A. They buy by name.

Q. 17. Buy by the brands?

A. Brands; yes, sir.

Q. 18. If they have bought a particular flour and it has given satisfaction, they come back and call for that brand again?

A. Yes. It is explained that we have different grades, different names, and they buy by name and grade.

Q. 19. Do the salesmen from wheat grinding mills ever call on you?

A. Yes, sir, we have those.

Q. 20. Do they ever explain any thing to you as to the Nashville mills, some of them being blenders?

A. Yes, most of them do.

Q. 21. And you have understood that?

A. Yes, sir.

Mr. Malone: All right, cross-examine.

Cross-examination by Mr. Bane.

X. 1. How long have you been in business, Mr. Sherrill?

A. I have been in business at Hartsell thirty years to thirty-five.

X. 2. Thirty to thirty-five years?

A. Yes, sir.

X. 3. What character of business is yours, a retail or a wholesale grocery?

A. Retail.

X. 4. What size town is Hartsell?

A. About three thousand people.

X. 5. What percentage of your trade is a darkey trade?

A. Oh, I guess about a third.

X. 6. Not more than that?

A. Not more than that. No, sir, hardly that, I guess.

X. 7. Flour from what other concerns do you handle in addition to that from the Wautaga Milling Company and the F. J. McCarthy Milling Company?

A. That is all we are handling now, except we have some from the Gallatin Milling Company.

X. 8. Where?

A. The Gallatin Milling Company.

X. 9. G-a-l-l-a-t-i-n?

A. Yes, sir.

X. 10. Do they grind the wheat into flour?

A. I understand that they grind.

X. 11. Where is that, do you know?

A. Gallatin, Tennessee.

X. 12. Gallatin, Tennessee. What kind of flour did you buy from them?

A. The Mentor.

X. 13. A short patent?

A. Supposed to be forty per cent.

X. 14. That would be a short patent?

A. Yes.

X. 15. Is that a high grade flour?

A. Yes.

X. 16. You have been buying from them for the last year, that character of flour?

A. Just a few lots of it, small lots in order to test it out, is all.

X. 17. I understand you have been buying from the Wautaga Milling Company and the F. J. McCarthy Milling Company here in Nashville for the last three years?

A. About three years. Previous to that I handled the Cherokee Tip-Top.

X. 18. You handled the Tip-Top put out by the Cherokee Milling Company of Nashville?

A. Yes, sir.

X. 19. What other concerns in Nashville have you bought from?

A. That is all we have bought from in Nashville.

X. 20. Then, you have bought from three concerns in Nashville?

A. I bought, previous to that I handled Ford flour.

X. 21. What kind of a concern is the Cherokee Milling Company? Is that a grinder of wheat into flour, or a blender?

A. A blender.

X. 22. The Ford Flour Company is a blender, you knew that?

A. Yes.

X. 23. Then you bought from four blenders in Nashville, is that right?

A. That is right.

X. 24. When did you learn, Mr. Sherrill, that the Wautaga Milling Company, did not grind?

A. I knew it all the time.

X. 25. You have known it ever since you have bought from them?

A. Yes, sir.

X. 26. When did you learn that the J. F. McCarthy Milling Company did not grind the wheat into the flour they sold?

A. I knew that all the time. I knew they practically worked together.

X. 27. You knew that?

A. Yes, sir.

X. 28. How long ago was it that you learned that they did not grind wheat into flour?

A. I knew it when they began business.

X. 29. When who began business.

A. McCarthy.

X. 30. You knew when that concern began business?

A. I knew they were blenders when they began business.

X. 31. How long have they been in business?

A. I don't know. A number of years.

X. 32. How did you happen to know when they began business that they were blenders and not millers of wheat?

A. I knew Mr. McCarthy when he was with the Ford Flour Company.

X. 33. You have known Mr. McCarthy personally?

A. Yes, sir.

X. 34. And you knew from talking with him what the character of the business was?

A. Yes, I knew that he opened up the mills for blending purposes.

S. L. Sherrill C. L. Cannon

X. 35. When did you learn that the Cherokee Mills did not grind the wheat into flour, that they sold?

A. I knew that when it began business with them.

X. 36. How long ago has that been?

A. Oh, that has been ten or twelve years ago.

X. 37. How did you learn that?

A. I changed from a mill flour to the blended flour because I found it was giving satisfaction. I knew what I was doing when I bought and made the change.

X. 38. How did you learn it?

A. I knew it from—I don't know who told me, I cannot remember that at this time, but I knew what I was buying.

X. 39. Some one told you?

A. Yes, sir.

X. 40. Other than the Cherokee Mills?

A. No, sir.

X. 41. Did some one other than the Cherokee Mills tell you it was not a wheat grinder, but a blender?

A. I think the first flour I bought from them was when I was in the mill and saw it blended.

X. 42. You were up here to see it?

A. Yes. I sold for them as a broker.

X. 43. Further than that, you sold for the Cherokee Mills as a broker?

A. Yes, sir.

X. 44. Have you been up in Nashville quite frequently?

A. A number of times in my life. Yes, sir.

X. 45. Approximately how often have you come to Nashville in a year?

A. I have not been to Nashville in the past year.

X. 46. When you would come to Nashville, would you go around to the various concerns, flour concerns?

A. Yes, sir.

X. 47. You have been through their plants?

A. Yes, sir.

X. 48. And did that ten or twelve years ago?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Witness Excused.

C. L. CANNON, was thereupon called as a witness, and having been duly sworn, testified as follows:

C. L. Cannon

Direct Examination by Mr. Malone.

Q. 1. Your name is Mr. C. L. Cannon?

A. Yes, sir.

Q. 2. Where do you live, Mr. Cannon?

A. Spartanburg, South Carolina.

Q. 3. What is your occupation?

A. Wholesale feed and flour.

Q. 4. Do you handle plain or self-rising or both?

A. Both.

Q. 5. Which do you handle the most in your part of the country?

A. About fifty-fifty.

Q. 6. What flours have you now?

A. I handle seven or eight different kinds.

Q. 7. Do you handle any flour produced in Nashville?

A. No, sir, except the Nashville Roller Mills.

Q. 8. You handle the products of the Nashville Roller Mills, and have for how long?

A. About eight years.

Q. 9. Has that flour been satisfactory to your trade?

A. Entirely satisfactory.

Q. 10. Are you influenced by the use of the word "mills" or "manufacturer" in the maker's name when you buy a flour?

A. No, sir.

Q. 11. What does influence you?

A. Well, quality and price and satisfaction.

Q. 12. If the price is right, the quality keeps up and the flour is satisfactory to your trade, then it makes no difference to your whether the man calls himself a miller or a manufacturer, is that correct?

A. Yes, sir.

Q. 13. Do you know that the Nashville Roller Mills does not grind wheat?

A. Yes, sir.

Q. 14. Have you known that all the time while you were dealing with them?

A. Before I commenced buying.

Q. 15. How do your customers ask for flour?

A. By name.

Q. 16. Call for certain brands?

A. Brands, yes, sir.

Q. 17. Do the salesmen from wheat grinding mills ever call on you?

A. Yes, sir.

Q. 18. What do they say, if anything, about the Nashville producers here?

A. Well, they say "they are just blenders, we grind the wheat."

Q. 19. And that the Nashville concerns generally do not grind?

A. Yes, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Where do you sell as a wholesaler, Mr. Cannon, in what territory?

A. In Spartanburg County.

X. 2. Just in Spartanburg County?

A. In Spartanburg County.

X. 3. When did you learn that the Nashville Roller Mills was not a concern grinding its wheat into flour?

A. Before I commenced buying the flour.

X. 4. Before you bought flour from them?

A. Yes, sir.

X. 5. You bought for eight years, that will carry you back to 1921?

A. Yes, sir.

X. 6. Was it just shortly before you began buying from them that you learned they were not grindi wheat?

A. That was the first time I ever handled flour.

X. 7. The first time you ever handled flour at all?

A. Yes.

X. 8. You have only been handling flour as I under stand, eight years?

A. Yes, sir.

X. 9. How long have you been in business?

A. Twenty-three years.

X. 10. You did not handle flour before that time?

A. No, sir.

X. 11. Now, how did you learn that they did not grind the wheat into the flour that they sold?

A. Through a broker.

X. 12. You learned of that through a broker?

A. Yes, sir.

X. 13. The broker told you so?

A. That represented the Nashville Roller Mills.

X. 14. The broker represented the Nashville Roller Mills that told you they did not grind wheat?

A. Yes, sir.

X. 15. Before that broker told you that the Nashville Roller Mills did not grind wheat into the flour which it sold, what kind of concern did you think it was?

A. I did not know there was any such concern.

X. 16. At the same time he told you the name, he told you what character of concern it was?

A. Oh, yes, and what he was doing in Georgia and all around.

X. 17. Prior to the time he told you that, Mr. Cannon, did you know that concerns using the word "mill" or the word "milling", in the name, or representing themselves as such and such a milling company or such and such mills, were blenders?

A. No, sir.

X. 18. You did not know that any such thing as a blender used such words in its name?

A. I never had looked into it.

X. 19. You did not, did you?

A. No, sir.

X. 20. And the word "mill" when used in the name of a concern, or the word "milling" when used in the name of a concern up until that time, meant to you a concern grinding wheat into flour, didn't it?

A. It did not mean anything to me up to that time.

X. 21. Certainly it was bound to mean something. You do not mean to tell me that you could have heard of the Pillsbury Mills and knew that they sold flour, without an idea of what kind of a concern it was, did you?

A. Yes. I never heard of any flour mill selling it. I just began handling it at that time.

X. 22. You never heard of a flour mill?

A. No, sir.

X. 23. You did not know there was such a thing as a flour mill?

A. I knew there was such a thing.

X. 24. You knew there was such a thing as a concern which ground wheat into flour?

A. Yes, sir.

X. 25. When you heard of a concern, such as the Eureka Milling Company, you thought that was a concern grinding wheat into flour?

A. If it used the word mill, yes.

X. 26. The same thing as the Eureka Mills?

A. Since that time—

X. 27. And prior to that time, is not that true?

A. Yes.

X. 28. Now, prior to that time, being a concern that called itself, Mr. Cannon, a manufacturer of flour, meant a concern that ground the wheat into the flour, didn't it, that is the way you manufacture flour?

A. I thought that about feed. I never did look into the flour business up until I commenced handling it.

X. 29. What does a concern that uses the expression, "manufacturer of flour", to-day, mean to you?

A. Well—

X. 30. Suppose I tell you, Mr. Cannon, that I am representing the Eureka Mills, manufacturers of high grade flour; what kind of a concern would you say that was?

A. I would ask.

X. 31. How?

A. I would ask you

X. 32. You would ask me? I would say, I have got some flour to sell you. I am representing the Eureka Mills, manufacturers of high grade flour. I want to sell you some flour.

A. I would ask you whether you were a blender or a manufacturer.

X. 33. That is since you learned that blenders use the words "mill" or "milling" and represent themselves as manufacturers of flour?

A. Yes, sir.

X. 34. Since that time, since you have learned that, you would ask that question?

A. Yes, sir.

X. 35. Now, are not there other considerations, Mr. Cannon, than the quality, the price and service, and influence you in buying, we will say flour; don't you take into consideration before you devote your time and effort to building up a demand for a certain kind of flour or a certain product among your trade, don't you try to find out what character of concern's product it is you are putting out, and the likelihood of that concern being able to furnish you the product?

A. Yes, sir.

X. 36. That is an influence too, isn't it?

A. Yes, sir.

X. 37. Naturally would be.

A. Yes, sir.

X. 38. And in your opinion, Mr. Cannon, don't you think it is desirable in the interest of fair dealing and fair play with the public, and with dealers, that concerns who do not grind wheat into flour, should not represent themselves as mills or milling companies?

Mr. Malone: That is objected to, Mr. Examiner.

Examiner Sheppard: Yes. The objection is sustained.

Mr. Bane: That is all, Mr. Examiner.

Witness Excused.

H. M. HUGHES, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Your name is Mr. H. M. Hughes?
A. Yes, sir.
Q. 2. Where do you live, Mr. Hughes?
A. Huntsville.
Q. 3. Huntsville, Alabama?
A. Yes, sir.
Q. 4. That is in the northern part of Alabama?
A. Yes, sir.
Q. 5. Mr. Hughes, what is your occupation?
A. Wholesale grocer and coffee roaster.
Q. 6. Do you handle flour?
A. Yes, sir.
Q. 7. Plain and self-rising or both?
A. No, sir plain.
Q. 8. You do not handle self-rising?
A. No, sir.
Q. 9. Whose flours have you been handling?
A. McCarthy Milling Company.
Q. 10. For how long?
A. About three years.
Q. 11. How long have you been in business?
A. Well, in the business I am in now, I have been in about five years.
Q. 12. Has that flour been satisfactory to your trade?
A. Yes, sir.
Q. 13. Are you influenced by the use of the word "mills" or "manufacturer" in the name or literature of the producer of flour when you buy the flour?
A. No, sir.
Q. 14. What does influence you in buying flour?
A. One that the trade wants, and can buy at the right price.
Q. 15. The price and satisfaction to your trade?
A. Yes, sir.
Q. 16. If the price is right, the quality is right, the service is right, and satisfaction to your trade is given, as I understand you, it makes no difference to you, whatever, whether the producer uses the word "mills" or "manufacturer" in his name or literature?
A. No, sir.
Q. 17. How do your customers ask for flour?
A. By the brand.
Q. 18. Do the salesman of wheat grinding mills ever call on you?
A. Yes, sir.

H. M. Hughes

Q. 19. Have they or not explained to you about some of these Nashville concerns, whether they are blenders or grinders?

A. Oh, yes, that is one of the—what they say to fight them with price—I mean selling argument.

Q. 20. That is the selling argument used by the wheat mills salesmen?

A. Yes, sir.

Q. 21. That the Nashville concerns are mostly mixers and not grinders?

A. That is right.

Mr. Malone: Cross-examine.

Cross-examination by Mr. Bane.

X. 1. What sized town is Huntsville?

A. About Twenty-three thousand.

X. 2. How much?

A. Twenty-three thousand.

X. 3. Twenty-three thousand?

A. Yes, counting the mills.

X. 4. Counting the what?

A. Counting the mills outside. We do not get credit for them. I think the town is about Ten thousand, but I think the new census will show about 23,000.

X. 5. What mills?

A. The Dallas and Merimac mills.

X. 6. What kind of mills?

A. Cotton mills.

X. 7. Where do you sell as a wholesale grocer?

A. Well in the country, and there in town too, but mostly in the country.

X. 8. Do you sell retail as well as wholesale?

A. No, sir; wholesale.

X. 9. I understood you to say you had been in that business five years?

A. Yes, sir.

X. 10. What business were you in prior to that time?

A. I used to be in the brokerage business.

X. 11. In the brokerage business?

A. Yes, sir.

X. 12. What kind of brokerage business?

A. Wholesale grocery, flour, meal.

X. 13. Where?

A. Huntsville.

X. 14. What was the name of the concern?

A. Wholesale grocery. Hughes Wholesale Grocery

and Coffee Company, and then the North Alabama Brokerage Company.

X. 15. And before that, it was what name?

A. The North Alabama Brokerage Company.

X. 16. From what other concerns here in Nashville, outside of the F. J. McCarthy Milling Company do you buy flour?

A. I have bought one lot from the Ford Flour Company. They were operating as different mills.

X. 17. They were the only two concerns in Nashville you bought from?

A. Well, for several years, since I have been in the business. In the brokerage business I used to handle some for the Southland Mill & Elevator Company.

X. 18. What other concerns, whether located in Nashville or not, do you buy from?

A. None.

X. 19. Just the McCarthy Milling Company?

A. Yes. I don't use much flour.

X. 20. Your flour business is very small?

A. Yes, sir.

X. 21. Relatively a very small portion of your business?

A. Yes, sir.

X. 22. When did you learn that the F. J. McCarthy Milling Company was not a concern grinding wheat into the flour it sold?

A. I had been traveling out of here about twelve years and knew pretty well about Nashville, knew what they were. A man retired from business down there W. H. Bates, who used their line, three years ago and I rented the place. He said "Hughes you had better get the F. J. McCarthy line, it is a cracker-jack," and I got the line.

X. 23. I am perfectly willing for you to praise Mr. McCarthy's line, but I wish you would answer the question.

A. How is that now? What is the question?

X. 24. My question was, how and when did you learn the F. J. McCarthy Milling Company was not a concern that ground wheat into flour?

A. I was telling you, the fellow I bought out, Mr. Bates, he said they were not grinders of wheat.

X. 25. When was that?

A. Three years ago.

X. 26. Prior to that time you did not know anything about it?

A. I guess I did.

X. 27. Prior to that time you did not know, is that right?

A. My understanding was, there was two mills in Nashville the Liberty and Southland Mill & Elevator Company ground in a small way. I had been traveling out of here.

X. 28. You had been traveling out of Nashville for how long?

A. I have not traveled out of here for some time. But I worked out of here for R. B. Cheek & Sons.

X. 29. Wholesale Grocers?

A. Yes, sir.

X. 30. You traveled out of Nashville?

A. Yes, that was prior to this time, in 1916.

X. 31. Prior to the five years ago when you went into business for yourself?

A. Yes.

X. 32. From your association here in Nashville, did you know then, that the F. J. McCarthy Milling Company was not a concern grinding wheat into flour?

A. I may not have known of them at the time.

X. 33. When did you learn, Mr. Hughes, that concerns using the words "mills" or the word "milling" in their name, and selling flour were not concerns that ground the wheat into the flour that they were offering to sell?

A. I have been knowing that for several years. I have been up here, went through some. I had not been through Mr. McCarthy's.

X. 34. That is the way you learned it?

A. Yes, sir.

X. 35. Prior to that time you learned it in that way, what character of concern did you think a concern selling flour and representing itself to be a mills or milling company, was?

A. I knew both of them used the same thing, the mills and mixers or blenders.

X. 36. Yes, prior to that time you learned, as you told about the Nashville mills, what did you think that kind of concern was?

A. What did the name miller mean?

X. 37. Yes, did not that mean to you a concern grinding wheat into flour, Mr. Hughes?

A. Not necessarily, because I had known both used the same name.

H. M. Hughes

X. 38. You have told us that, told us how you learned it, from your association in Nashville?

A. Yes, sir.

X. 39. Prior to your association here, what did it mean? Did not it mean a concern which ground wheat into flour?

A. Not necessarily. I have been in the grocery business all my life, and knew they were both.

X. 40. What is a manufacturer of flour, Mr. Hughes?

A. I suppose a manufacturer of flour grinds the wheat.

X. 41. Grinds the wheat into flour?

A. And they call it manufacturing when they use phosphate when they make self-rising flour, when they bleach the flour, running it through the machinery that they have.

X. 42. Do you think that manufactures flour?

A. It seems to me that it does.

X. 43. How do they manufacture?

A. In the self-rising, they use phosphate, salt, and whatever it is.

X. 44. Every cook in the kitchen that buys your plain flour and mixes baking powder with it is a manufacturer of flour, do you believe that?

A. Not necessarily. They have mills, have machinery for doing this business.

X. 45. Do you know how they blend flour?

A. No, sir, I am not well acquainted.

X. 46. Do you know how they prepare self-rising flour?

A. About, yes.

X. 47. They take the flour and they add to it the phosphate, soda, and salt and stir it up?

A. They have their mixer to run it through.

X. 48. They stir it up?

A. Yes, sir.

X. 49. And then sift it?

A. I don't know about the sifting.

X. 50. You do not know whether they sift it or not?

A. No, sir.

X. 51. But they do take it out and store it?

A. Yes, sir.

X. 52. And when the house-wife or cook buys plain flour of yours, she buys it to make bread out of it?

A. Yes, sir.

X. 53. And to make bread out of it she has to add the same ingredients, phosphate, soda, salt?

A. No, she uses soda and buttermilk lots of times.

X. 54. Or she adds baking powder, does not she?

A. Yes, sir.

X. 55. In some instances she adds phosphate, soda and salt, the combination in baking powder?

A. I don't think many use phosphate, they use soda and buttermilk, or baking powder and sweet milk.

X. 56. Then, they put it in the sifter and take the handle and turn it around, is that right?

A. Yes, sir.

X. 57. That gives it every thing that they need to make dough?

A. Yes, sir.

X. 58. They are manufacturers of flour in your opinion?

A. No, they are manufacturers of biscuit. They will cook it.

X. 59. But, the process in general, they do not manufacture it, you do not call every housewife or cook in the kitchen a manufacturer?

A. No.

X. 60. No, she is not a manufacturer of flour?

A. She is manufacturing biscuits.

X. 61. She is not a manufacturer of flour, is she?

A. No, sir.

X. 62. Certainly not. Don't these blending concerns, Mr. Hughes, sell direct to your retail trade?

A. I think so, yes, some of them.

X. 63. Don't F. J. McCarthy?

A. I think he gives a territory, certain territories. He gave me a territory there in Huntsville.

X. 64. And he does not sell to your retail trade?

A. No, sir.

X. 65. If he sold to your retail trade, you would not want to buy from him?

A. Not if I was handling the brands that they gave me exclusive on.

X. 66. Did you ever hear of the Modern Milling Company?

A. I think so.

X. 67. Does that concern sell to your customers?

A. The Modern, I don't know whether they do or not. Huntsville Jobbers—I mean the Huntsville merchants buy from the jobbers more than any thing else.

X. 68. How did you hear of the Modern Milling Company?

A. From Ed Griffiths, from them cutting prices.

X. 69. Is that another concern in Nashville?

A. I think so.

X. 70. Don't you know that they sell to your customers?

A. No, sir.

X. 71. Did you ever hear of the Southern Flour Mills?

A. Yes, sir.

X. 72. Do they sell to your retail customers?

A. Not the ones I am selling. They do sell in my territory.

X. 73. They do sell in your territory?

A. Yes, sir.

X. 74. Who do they sell to, another jobber or retailer?

A. No, just the retailer.

X. 75. They sell to retailers in your territory?

A. Yes, sir.

X. 76. That is another concern in Nashville, is not it?

A. Yes, sir.

X. 77. Did you ever hear of the Wautauga Milling Company?

A. Yes, sir.

X. 78. Does that sell to the retail trade in your territory?

A. I don't think they have much business there. I don't know. I have not come into them.

X. 79. Which is it, do they sell some to the retail trade?

A. I could not say. I don't remember seeing it in the trade I call on.

X. 80. Do you know whether or not that is another concern here in Nashville?

A. I think so. Yes, I have had quotations from them.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

RD. 1. Did you study Latin when you were a boy?

A. Some, not much.

Mr. Bane: Did he study what?

Mr. Malone: Latin.

RD. 2. Manufacture means making by hand, don't it? **Manus** means "hand," and **facere**. to make, making by hand?

Mr. Bane: Do you know that?

A. How is that?

RD. 3. Do you know that "manufacturing" means made by hand, if you are going to take it literally on the derivation of the term?

Mr. Bane: Do you know the word "manufacture" is derived from two Latin words?

A. No, I do not believe I do.

RD. 4. Well, Mr. Bane knows it if you do not. He will admit it, I believe.

A. All right.

RD. 5. He used to know it when he was in college.

Mr. Bane: Used to, yes.

RD. 6. He is asking you about the housewife now. Is not it true that if a druggist takes pine tar, we will say, and sulphur and something else and mixes it up and makes a kind of ointment out of it for eczema, I reckon it will cure eczema, it will cure the mange, that is what we used to use on dogs for mange, he can mix that by hand?

A. Yes, sir.

RD. 7. If he had a great big factory, and mixed that stuff by machinery and sold it by the carload, you would call that a manufacturer?

A. Yes, sir.

Mr. Bane: That is objected as argumentative.

Examiner Sheppard: Let it stay in. Go ahead.

RD. 8. Now, Mr. Hughes, did you ever hear of anybody just cooking flour, just taking the flour, anybody eating flour just like it is?

A. No, sir.

RD. 9. Any human being, I mean?

A. No, sir.

RD. 10. Now, if you take flour and then by means of machinery mix in phosphate, salt and soda in certain proportions, and put it through a reel and a mixer, do you get a product that is the same product that went into there, or is not that a different product?

Mr. Bane: I object. There is nothing shown that this man knows or has had experience in either

blending or mixing flour. I do not see how he can tell it is a different product or not, when he does not even handle a self-rising flour.

Examiner Sheppard: I do not know that his opinion on that would be worth very much. I do not have any set objection to the question. Let him answer if he wants to.

Mr. Malone: The only reason I am asking is because Mr. Bane was asking his opinion as to manufacture, what was understood by manufacture.

Mr. Bane: I just asked whether he called a person doing a specific operation, a manufacturer of flour.

Mr. Malone: That is the question I am on.

A. I would think that would be manufacturing self-rising flour.

RD. 11. Exactly. You have a product that the house wife can use?

A. Yes, sir, all ready prepared.

RD. 12. And you did not have it before.

A. Yes, sir.

Mr. Malone: All right. That is all.

Witness excused.

J. B. LISLE, was then called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Lisle, what is your residence?

A. Opelika, Alabama.

Q. 2. What part of the state is that in?

A. Call it the middle eastern part of the state, I guess.

Q. 3. What is your occupation?

A. Merchandising.

Q. 4. Wholesale or retail?

A. Retail.

Q. 5. Do you handle flour?

A. Yes, sir.

Q. 6. Plain or self-rising or both?

A. Both.

Q. 7. Which do you handle the more of in your territory?

A. About seventy-five per cent self-rising.

Q. 8. What flours have you been handling?

A. Well, I handle a number of different flours, the Royal Milling Company—

Q. 9. That is a Nashville concern?

A. Yes, sir.

Q. 10. Has that flour that you bought from the Royal Milling Company been satisfactory to your trade?

A. Absolutely.

Q. 11. Are you influenced by the use of the word "mills" or "manufacturers" in the name of the maker when you buy the flour?

A. No, sir.

Q. 12. What are the elements that influence you in buying flour?

A. Quality.

Q. 13. And what about the price?

A. Well, price, you might—of course price.

Q. 14. What about satisfaction to your trade?

A. Well, naturally I buy flour that will satisfy, have to have it.

Q. 15. Are those or not the principal things that influence you in buying?

A. Yes, sir.

Q. 16. The quality, the price and the satisfaction to your trade?

A. Yes, sir.

Q. 17. And if they are right, it does not make any difference to you whether the man uses the word "mills" or "manufacturer" or not in his name or literature, is that correct?

A. That is correct.

Q. 18. In buying this flour from the Royal Milling Company, do you know that they do not grind the wheat?

A. Yes, sir.

Q. 19. How do your customers buy flour?

A. By name, by brand.

Q. 20. They come in and ask for certain brands?

A. Yes, sir.

Q. 21. Do the salesmen from the wheat grinding mills ever call on you?

A. Yes, sir.

Q. 22. What do they say about the Nashville flour concerns?

A. They are knockers. They knock the Nashville mills.

Q. 23. That they are not grinders of wheat.

A. That they are mixers or blenders.

Q. 24. That they are mixers or blenders. How long have you been handling the flour from the Royal Milling Company?

A. Since '21, I am positive '21, I think that is correct, 1921.

Q. 25. Do you know whether or not the Royal Milling Company operates under any other name?

A. Yes, sir, one other name, I remember.

Q. 26. What is that?

A. Richland.

Q. 27. Do you buy under both those names?

A. Yes, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. How large a town is Opelika?

A. Six thousand.

X. 2. Did you tell us how long you have been in the retail mercantile business there?

A. Since 1921.

X. 3. Since 1921?

A. Yes, sir.

X. 4. Prior to that time what were you doing?

A. Farming.

X. 5. Farming?

A. Yes, sir.

X. 6. What percentage of your trade is darkie trade, Mr. Lisle?

A. I would say fifty per cent.

X. 7. About fifty per cent?

A. Yes, I would judge that.

X. 8. What other concerns, other than the Royal Milling Company and the Richland Milling Company, do you buy flour from, Mr. Lisle?

A. The City Mills, Columbus, Georgia, the Lexington Roller Mills, I have bought flour from those people, but I don't know where they are located, the McCudick Milling Company.

X. 9. All right, any others?

A. That is all I recall.

X. 10. The City Mills in Atlanta, are they grinders of wheat or blenders?

A. Columbus, Georgia. They are grinders.

X. 11. The Lexington Roller Mills?

A. They are supposed to be wheat grinders. I don't know what they are.

X. 12. The McCudick Mills?

A. Supposed to be grinders. I am not sure.

X. 13. When did you learn that the Royal Milling Company was not a grinder of wheat into the flour that it sold?

A. When I bought the first order I ever bought from them.

X. 14. How did you learn that?

A. The Salesman told me.

X. 15. The salesman of the Royal Milling Company?

A. Yes.

X. 16. How did he happen to tell you?

A. I don't know, sir. He was an old man who worked me several months before I bought from him, and finally I just drew him out.

X. 17. Just drew him out? Prior to that time what did you understand as to the character of the concern that used the word "mill" or the word "milling" in its name?

A. I had never noticed it. I would always, when living in the country, just buy a sack of flour, whatever I wanted.

X. 18. What did it mean to you prior to the time you learned from the Royal Milling Company's salesman, that it did not mean or that they did not grind the wheat into the flour it sold? You have heard of a concern called the Eureka Mills, the Eureka Milling Company, we will say, what kind of concern did you think that was?

A. I thought that was a flour manufacturer.

X. 19. A flour manufacturer is one that grinds wheat into flour?

A. That was my idea of it.

X. 20. Did you ever hear of the Empire Milling Company?

A. I don't believe I have, sir. I don't remember that I have.

X. 21. You do not remember if you have?

A. No, sir.

X. 22. Do you know that there is any such company in Nashville, as the Empire Milling Company?

A. No, sir, I don't.

X. 23. How did you learn that the Royal Milling Company and the Richland Milling Company are the same concern?

A. By the sacks, I think probably the invoices or sacks, I don't remember which.

X. 24. Do they state they are one or the same concern on their invoices and sacks?

A. I believe the invoices come with both names on them. I am not positive about it, and could not tell you.

X. 25. When you bought from the Richland Milling Company, I understand you bought from them after buying from the Royal Milling Company?

A. Yes.

X. 26. Did you think you were buying from the same concern or another concern?

A. I bought from the same salesman.

X. 27. You did buy from the same salesman?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

RD. 1. Which concern gave you the most satisfaction, the flour you bought from Mr. McGraw's mill, the Royal Milling Company, or the flour you bought from a grinder?

A. The flour from the Royal Milling Company, also the Richland Milling Company.

Mr. Malone: All right.

Recross-examination by Mr. Bane.

RX. 1. Did you buy any self-rising flour from the City Mills is that the name of it?

A. Yes, sir.

RX. 2. You bought self-rising flour from the Lexington Mills, also?

A. Yes, sir.

RX. 3. And from McCudick?

A. Yes, sir.

RX. 4. Did you buy plain flour from all three of them?

A. I guess I have. I have forgotten. I don't believe I bought plain from Lexington. I have from the City mills, I am sure. I know that.

Mr. Bane: That is all.

Witness Excused.

GEORGE W. JACKSON, was thereupon called as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Your name is George W. Jackson?

A. Yes, sir.

George W. Jackson

Q. 2. Where do you reside, Mr. Jackson?

A. LaGrange, Georgia.

Q. 3. What part of the State is that?

A. That is about central western part of the state.

Q. 4. What is your occupation?

A. Merchant.

Q. 5. How long have you been in business as a merchant?

A. Four years the 10th of this coming August.

Q. 6. Do you handle flour?

A. Yes, sir.

Q. 7. Plain, or self-rising, or both?

A. Both.

Q. 8. Which do you handle the most of in your territory?

A. I would say about 55 to 60 per cent of self-rising.

Q. 9. What flours have you been handling?

A. The Royal Milling Company Clover Leaf, Silver Dawn.

Q. 10. Those are brands put out by the Royal Milling Company of Nashville?

A. Yes, sir.

Q. 11. Has that flour been satisfactory to your trade?

A. Perfectly.

Q. 12. Are you influenced by the use of the word "mills" or "manufacturers" in the man's name or on his literature when you buy flour?

A. No, sir.

Q. 13. What does influence you in buying flour?

A. Price, quality and service.

Q. 14. And satisfaction to your trade?

A. Yes, sir.

Q. 15. Are you a retail merchant?

A. Yes, sir.

Q. 16. Are those the principal things which influence you as a merchant in buying flour?

A. Yes, sir.

Q. 17. And the use of the word "mills" in the trade name, or "manufacturer" in the literature, has nothing to do with it so far as you are concerned?

A. No, sir.

Q. 18. How do your customers ask for flour?

A. By brand, as for Clover Leaf, Silver Dawn, as if asking for Maxwell House or Arbuckles Coffee.

Q. 19. Coffee?

A. Yes, anything else, any canned goods.

Q. 20. Maxwell House and Arbuckles are brands of coffee?

A. Yes, sir.

Q. 21. And they come in and ask for flour like they ask for other goods, by the brands?

A. Yes, sir.

Q. 22. And if they are satisfied, they come back and ask for it again?

A. Yes, sir.

Q. 23. You say this flour has been satisfactory to your trade?

A. Yes, sir.

Q. 23½. Do wheat mills salesmen ever make your territory and call on you?

A. Yes, sir.

Q. 24. What do they say about the Nashville concerns, as to whether or not they are mixers?

A. They say "They are mixers, we sell them."

Q. 25. Well, do those arguments influence you in buying?

A. No, sir.

Q. 26. Have you bought flour from any grinding mill that was unsatisfactory?

A. Yes, sir.

Q. 27. What is that?

A. I have bought some flour from J. Allen Smith.

Mr. Bane: From what?

A. J. Allen Smith, I think they are grinders.

Q. 28. A grinder at Knoxville?

A. Yes, and I have bought some from the Lexington Roller Mills.

Q. 29. They are grinders, also?

A. So they say, yes, sir.

Mr. Malone: All right, cross-examine.

Cross-examination by Mr. Bane.

X. 1. What grade of flour is Silver Dawn Flour, Mr. Jackson?

A. It is a high grade flour, self-rising.

X. 2. What is it, short patent, long patent, clear flour, straight flour, or what?

A. Self-rising flour.

X. 3. Don't you know whether it is short patent, long patent or what?

A. It has just got something that makes them call for it and I sell it.

X. 4. I am not asking that.

A. I don't know, sir.

X. 5. Do you know whether it is a short patent or a long patent?

A. No, sir.

X. 6. Does it have on the package which it is?

A. I suppose so.

X. 7. Do you know?

A. No, sir.

X. 8. What kind of flour is Clover Leaf?

A. Plain flour.

X. 9. Is that short patent, long patent, clear, or straight, or what is it?

A. I just would not say what it is.

X. 10. Don't you know?

A. No, sir.

X. 11. Have you bought from any other grinding mills, other than the J. Allen Smith and the Lexington mills?

A. No, sir.

X. 12. Do you mean for us to understand that all the flour you bought from them is unsatisfactory?

A. Yes, sir.

X. 13. How often have you bought from them?

A. I gave them both one order, each.

X. 14. What kind of flour, what grade?

A. They told me they would put it up against Peekaboo.

X. 15. Which?

A. Peekaboo.

X. 16. What is Peekaboo?

A. Silver Dawn—it is a grade of flour they sell in my town by that brand.

X. 17. All right.

A. And I proceeded to sell it, but I had to sacrifice it.

X. 18. That is true of each order you gave them?

A. Yes, sir, the Lexington Roller Mills and J. Allen Smith.

X. 19. Do you know whether it was a short patent flour, or a long patent?

A. No, sir.

X. 20. Self-rising or plain?

A. Self-rising.

X. 21. What sized mills are those, do you know, the J. Allen Smith mill.

A. I don't know.

X. 22. Is it a small mill?

A. I don't know.

X. 23. The Lexington Mills, do you know?

A. I don't know.

X. 24. What other mills have you bought from?

A. I have not bought from any other mills except those three.

X. 25. That is, the Royal, the J. Allen Smith and the Lexington mills?

A. The Richland, that is operated by the same people?

X. 26. How long did you buy from the Richland?

A. Around two years.

X. 27. And you bought from the Royal how long, ever since you have been in business?

A. Yes, sir.

X. 28. Did you ever buy any from the Empire Milling Company?

A. Not that I know of, no, sir.

X. 29. Did you ever hear of the Empire Milling Company?

A. Yes, sir.

X. 30. Is that another concern grinding in Nashville, or is it a blending plant?

A. I don't know, sir.

X. 31. You do not know whether it is a grinding plant?

A. No, sir.

X. 32. When did you learn that the Royal Milling Company did not grind the wheat into the flour that it sold?

A. I happened to buy a business that was selling the Royal Milling Company's product, and when I bought it, there was some flour in the store. My neighbor, a jobber down there, a wholesale groceryman down there, who sells Peekaboo came out to sell me my opening bill of goods, and he informed me this was a blended flour, and that the Royal Milling Company was a blender, also the millers' representatives.

X. 33. Now, prior to that time, that these men told you that, what kind of concern did you think it was that would pack that flour that way, that you took over?

A. I didn't have time to think, because I opened up one afternoon about two o'clock and Mr. LaGrand was in the grocery store out there by three or three-thirty.

X. 34. Had not you taken an inventory before?

A. Yes, sir.

X. 35. You had been in the store quite a while?

A. No, that morning, I suppose I got it fixed up by one o'clock.

X. 36. You did not have much flour on hand?

A. No, sir.

X. 37. You operate a very small grocery store, is it?

A. Yes, sir.

X. 38. When did you learn the Richland Milling Company was not a concern grinding wheat into flour?

A. The first order I bought.

X. 39. How did you learn?

A. Their salesman told me.

X. 40. The Richland Milling Company's salesman told you?

A. Yes, sir.

X. 41. Prior to the time that you learned that this Royal Milling Company was not a concern grinding wheat into the flour that it sold, as you have told us, you learned it; what kind of concern would you have thought it was, offering to sell you flour, and calling itself a milling company?

A. Well, as I say, I did not have any time to think.

X. 42. No. I am asking now, you did not. But, prior to that time that you learned the Royal Milling Company did not grind wheat into flour, a concern selling flour and calling itself a miller, the Eureka Mills or Eureka Milling Company, what kind of concern did you think that was?

A. I knew they were blenders when I opened up.

X. 43. That you knew who were blenders?

A. That the Royal Milling Company was blenders.

X. 44. I thought you said awhile ago you did not, that you learned it from the wholesale man.

A. I opened up at one o'clock and he was out there about 2:30 to sell me my opening stock.

X. 45. Then you learned it was not?

A. Yes, sir.

X. 46. All right, prior to that time, I ask, prior to the time you learned the Royal Milling Company was not a grinding company, grinding wheat into flour—

A. I did not know there was such a thing.

X. 47. You did not know there was such a thing as a blender?

A. Not until I opened up.

X. 48. A concern selling flour and calling itself a miller, you naturally thought it was grinding wheat into flour?

A. I naturally thought they were making flour in some way.

X. 49. When you thought that, the only way to make flour is to grind the wheat, you cannot make in any other way?

A. You have to grind the wheat first.

X. 50. To make flour?

A. Yes, sir.

X. 51. That is the only way you know how to make it?

A. The only way I know.

X. 52. The only way you know of?

A. The only way I know of, except you can treat it.

X. 53. But you have to grind the wheat to make the flour?

A. Oh, yes.

X. 54. And treating flour, is treating flour after it is made, is not it?

A. Yes, sir.

X. 55. What sized town is LaGrange, Georgia?

A. I would say about thirty thousand.

X. 56. A good sized town?

A. Yes, sir.

X. 57. What percentage of your trade is darkie trade?

A. I would say around forty per cent.

X. 58. Around forty per cent?

A. Yes, sir.

X. 59. Now, exclusive of that darky trade, Mr. Jackson, don't you know that there is a prejudice among your customers against flour made by blenders?

A. No, sir.

X. 60. Is not that a fact?

A. No, sir.

X. 61. Among a great many of your customers, that they do not like what they call flour from a blender?

A. No, they come back and call for it.

X. 62. What they call for, they do not know it is from a blender?

A. A percentage of my customers do.

X. 63. But a very small percentage of them?

A. They have been using it eight or nine years.

X. 64. Most of your customers do not know yet that is flour from a blender?

A. I just don't know that they know, but some do know it is from a blender.

X. 65. Some few know?

A. Yes, sir.

X. 66. Don't a great many object, and have a prejudice, regardless of whether it is good or bad, talking about a prejudice people may have, whether it is a well founded

prejudice or not, is not it true that a great many of your customers have a prejudice against flour from blenders?

A. No, sir, I don't know.

Mr. Bane: That is all.

Redirect Examination by Mr. Malone.

RD. 1. What stock of flour do you carry in your store?

A. Ten to thirty-five barrels—forty.

RD. 2. You were asked about making self-rising flour, the miller has first to get his flour before he can make his self-rising flour, hasn't he?

A. Yes, sir.

RD. 3. He has to either grind or buy it, don't he?

A. Yes, sir.

RD. 4. He does?

A. Yes, sir.

Mr. Bane: I did not ask anything about self-rising flour on cross-examination.

Mr. Malone: You asked about making flour.

Mr. Bane: Yes.

RD. 5. So, in making self-rising flour, either the miller or the blender, has first got to get the flour in some way?

A. Yes, sir.

RD. 6. And then treat it with these other elements, soda, salt, phosphate and put it through his mill?

A. Yes, sir.

Mr. Malone: That is all.

Mr. Bane: That is all, Mr. Examiner.

Witness excused.

W. P. GRAIG was thereupon produced as a witness and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Graig, where is your residence?

A. Albany, Georgia.

Q. 2. What is your occupation?

A. Flour salesman.

Q. 3. Who have you sold for?

A. The Nashville Roller Mills.

Q. 4. How long have you been in that occupation?

A. About seventeen years.

Q. 5. What are your duties as salesman?

A. Selling the wholesale grocery trade.

Q. 6. What territory do you cover?

A. Georgia, Florida and a part of South Carolina.

Q. 7. What do you find among the people you solicit, as to their knowledge or lack of knowledge that the Nashville Roller Mills is a blending concern?

A. I do not know of any instance where the wholesale grocer, especially those that handle our flour, are not very well versed in the situation, the fact of the matter is, we solicit them on that basis.

Q. 8. Solicit them on the basis—

A. The basis of being a blender.

Q. 9. Why do you do that?

A. Because we believe we are making a better and more satisfactory flour in that way to actually grinding the raw material.

Q. 10. Why do you believe it more satisfactory?

A. I believe that by dealing with the manufactured product, we can maintain a more uniform product, than by just dealing with the raw material.

Q. 11. And by raw material, you mean the wheat berries?

A. Yes, sir.

Q. 12. Can a wheat mill make self-rising flour by putting the wheat berries the salt, phosphate and soda in the container and running them through the mill?

A. No, sir.

Mr. Bane: Just a minute. I object to that as incompetent, no basis having been laid for this man's knowledge, to show he was ever in a wheat mill in his life. He is a salesman for the Nashville Roller Mills.

Examiner Sheppard: Qualify him.

Q. 13. Do you know of your own knowledge how self-rising flour is made, if you have been through the plants?

A. Yes, sir, I have been through both wheat grinding plants and blending plants.

Examiner Sheppard: I will let him answer.

Mr. Malone: Now, answer the question.

(The preceding question was then read to the witness.)

Mr. Bane: I submit the fact a man has gone

through a wheat mill once, does not qualify him to answer the question as to what a wheat mill can do.

Mr. Malone: Let us see his knowledge.

Mr. Bane: What is his opinion worth? He said he had been through a mill, so have I. I could not tell you what a wheat mill could do.

Mr. Malone: He says he has seen self-rising flour manufactured.

Mr. Bane: That does not mean that is the only way it can be manufactured.

Examiner Sheppard: Well, let him answer.

Q. 14. What do you say?

A. I never heard of self-rising flour manufactured out of the wheat berry. It is made from the manufactured product, which is prepared and then the ingredients added, of soda, salt and phosphate.

Q. 15. The same system is used by both the wheat grinders and the blenders?

A. Yes, sir.

Mr. Bane: So far as you know.

A. I have been through hundreds of mills.

Mr. Bane: You do not know what all mills do, do you?

A. All those I have gone through adopt practically the same policy.

Mr. Bane: You have never been through all the flour mills?

A. No, sir, I have not.

Q. 16. Is it your experience with your customers that they are affected by the use of the word "mills" or the word "manufacturer" in buying flour?

A. No, sir.

Q. 17. What does affect them?

A. Price, quality, service, co-operation, personal contact with them.

Q. 18. Satisfaction to the trade?

A. And satisfaction to the trade.

Q. 19. And if a flour gives them all that, they do not care who makes it, or what the name is?

A. No, sir.

Q. 20. Whether the man uses the word "mills" in his name or not?

A. The question never arises.

W. P. Graig

Q. 21. How long has Nashville been running these so-called blending mills here?

Mr. Bane: I do not see whether the man has qualified to answer that. He does not know.

Mr. Malone: If he knows.

Examiner Sheppard: If he knows he can tell us. If he does not know, he can say so.

A. The only thing I know, I have been representing the Nashville Roller Mills for seventeen years, that is the longest I have known they have been in business, because prior to that time I was in an entirely different line of work. I do know they have been here for seventeen years, though.

Q. 22. Has the Nashville Roller Mills' competitors who are so-called blenders here?

A. Yes, sir.

Q. 23. Do they sell the same territory that you cover?

A. Yes, most of them.

Q. 24. Do you find that the merchants that you visit know in general that these so-called mills are blenders, here in Nashville?

A. Yes, sir.

Q. 25. Even though they use the word "mills" in their name?

A. Yes, sir.

Q. 26. And so, the word "mill" in so far as the flour production is concerned has got a secondary meaning with those merchants and they know it?

Mr. Bane: Objected to. The man is not qualified to say whether it has a secondary meaning or not. He can tell what he knows, but characterizing it as a secondary meaning is an entirely different matter.

Examiner Sheppard: That is a matter the Commission has to conclude. I doubt if the witness knows what the secondary meaning means.

Q. 27. But, they do know that a blending plant that calls itself a mill, is still a blending plant, they know that?

A. Yes, sir.

Q. 28. What arguments do you find that the wheat mill salesmen put up against your line of goods?

A. Well, the main argument that they use is that they are buyers of wheat and they sell us, and that by the

fact they are able to sell us, and we are able to sell their trade places them in a superior position that is, by selling the trade, with the middle profits in there, that they can deal a great deal better with them, at less price than we can, and that by our method of operation we are incompetent to maintain a uniform flour, etc., and so on. And some of the competition tries to point out the fact that we are more or less like jobbers, more or less wholesale grocers, buying the manufactured product.

Examiner Sheppard: They consider you are middle men?

A. Yes, sir, that is the point. That bears, of course. But, there are other points they bring up showing their advantages against our disadvantages.

Q. 29. What about the mixers?

A. Well, there seems to be some little confusion between the term blender and the term mixer. All of them —that is, I won't say all of them, but practically all of the wheat grinders' representatives of the wheat grinding plants refer to us as mixers quite frequently say it is a small concern up there who buy the manufactured product and mix a little salt, soda and phosphate in it, with no ability to maintain uniformity and do not even know what it is. Of course they use every possible method in order to discount our standing and merit.

Q. 30. Well, is there pretty close competition between the so-called grinding mills and the so-called blenders?

A. Oh, yes, sir.

Q. 31. And the wheat mills' salesmen use every argument against these so-called blenders?

A. Yes, sir.

Q. 32. Including the fact that they do not make flour direct from wheat?

A. Yes, sir.

Q. 33. How long have they been making this argument, to your knowledge?

A. Ever since I have been on the road selling flour, seventeen years.

Q. 34. Do you find these arguments are effective, generally with your trade?

A. Well, in some instances they are and in some instances they are not. They are not effective to those customers that are handling our product, but with customers who are not handling our product, and who are open for solicitation of business, they naturally have

precedence over us, and of course it is up to us to bring our points to the foregoing and show them our advantages.

Q. 35. And you point out those advantages?

A. Absolutely.

Q. 36. That you do blend your flour?

A. That is our strong point of argument.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. I understand in opposition to the arguments put up by the actual mills themselves, those that grind the wheat into flour, that you use the argument that your flour in your opinion can be maintained at a more uniform quality, actually get a better grade of flour for various reasons from your blending plant than the mill can furnish. That is the argument you use?

A. Yes, sir.

X. 2. You attempt to show them why, in your opinion, that can be done?

A. Yes, sir.

X. 3. Now, I understood you to say, Mr. Graig, in answer to a question from Mr. Malone, that the question does not arise when you ordinarily solicit your trade, as to whether or not you are a blender or a mill grinding wheat into flour you sell?

A. The question arises, usually, on the first solicitation of a new jobber, more usually than any other time. The jobbers that we sell continuously, the question never arises. They often make the statement, though, about various and sundry other flour representatives, representing the wheat grinding plants, about what they have to say about us. But, our solicitation is so pointed on the fact that we are blenders of flour, there is no misunderstanding so far as our dealers are concerned.

X. 4. I was wondering if the question does not arise, or how does it happen that you tell them you are a blender and not one that grinds wheat into flour?

A. The question occasionally arises, not often, but if the question does not arise we bring out that point.

X. 5. You bring out that point?

A. Yes, sir.

X. 6. That is on instructions you have gotten from your mill?

A. No, sir, it is not on instructions I have received from the mill.

X. 7. In other words, your mill does not instruct you to tell them you are blenders?

A. No, sir, they do not instruct us, but would instruct us if we were misrepresenting.

Mr. Bane: I move to strike out what the Mill would do as entirely speculative, and because he cannot tell and would not know.

(The answer was read.)

Examiner Sheppard: Strike out from the word "would."

X. 8. I probably got the wrong impression. I had the impression you were instructed by your concern, the Nashville Roller Mills, to tell those upon whom you called, that you were what is known generally as a blender. Am I wrong in that, now?

A. Suppose I answer in this way, if it is satisfactory to you: All of us who are traveling for the Nashville Roller Mills, have been with them for a period of years. We all make periodical trips to the mill. We understand the theory of the business. We are not directly instructed to go out and make the statements, but use our own judgment on it, to make our own arguments, according to what we observe there in the plant. We try to make a study of the business, to see exactly and understand the theory of the manufacture, and we go out with that argument, but we are not pointedly instructed on it.

X. 9. But, you do know that it is the policy of the Nashville Roller Mills to have its salesmen tell those that they sell or that they attempt to sell, that they are not grinders of wheat, but blenders?

A. Absolutely.

X. 10. Have you ever heard a salesman for a wheat mill make these arguments or representations that you talked about, to a groceryman?

A. Yes, sir.

X. 11. You have heard that?

A. Yes, sir.

X. 12. Then, your knowledge is based not only upon what you learn from the customer, who tells you what the salesman tells him, but have heard it?

A. Yes, sir.

X. 13. What is the difference between a mixer and a blender? Have not you used the terms as if there might be a difference?

A. My idea has always been that the term "mixer"

was simply a buyer of flour, mixing soda, salt and phosphate; whereas the "blender" would possibly take two or three manufactured pieces, analyze it, get how much protein, how much carbohydrates, and ash, whatever the case might be, one quantity of a certain lot might run high in protein, another may be lower than our actual standard of grades. In other words, we have certain standards, representing certain grades of flour. We try to maintain uniformity by having the protein run exactly the same, our ash, and other properties, it being a mathematical problem to figure it out, so many pounds of one or the other, to make this blending. Whereas the mixer, I have always considered, merely buys the flour and adds soda, salt and phosphate.

X. 14. And stirs it up together?

A. Yes, sir.

X. 15. The mixer represents a lower grade of preparation than that of the blender?

A. I would not say that.

X. 16. That is your opinion. The product is evidently lower than your product?

A. I should say the Mixer cannot maintain the uniformity that the blender does, because he does not do it scientifically.

X. 17. The mixer cannot maintain the uniformity that the blender does, because he does not do it scientifically?

A. He does not do it scientifically.

X. 18. He does not do it as scientifically as the blender?

A. Yes, sir.

X. 19. Then, a mixer, is to you somebody, or a concern putting out a lower grade of product, or the chances are it would be a lower grade product than that of the one you describe as a blender?

A. No, sir; I would not say that. Possibly I did not make myself clear. He can take a high grade of flour, mix it, and be just as high as ours, but I will say that the mixer cannot maintain a straight, uniform grade day in and day out as scientifically as the blender of flour.

X. 20. And the concern that don't do those things that you refer to, analyze his flour in order to get the protein and the ash content, to keep his product uniform, makes you call him, not a blender but call him a mixer of flour?

A. Yes, sir.

X. 21. Your idea of a mixer of flour is not as good a crowd or concern as a blender?

A. Well—

X. 22. Does not that show, though, from what you say?

A. It may be my own belief.

X. 23. I am asking for your belief.

A. Yes, sir.

X. 24. That is your belief?

A. Yes, sir.

X. 25. And the concern that does not analyze its flour for the protein content, the ash content, etc., so as to keep those things uniform in its various brands, is not in your opinion a blender, he is merely a mixer?

A. Yes, sir.

X. 26. Do you know, Mr. Graig, how many of these concerns in Nashville that buy flour from concerns that grind the wheat into flour or from other sources, any how, do not grind the wheat into flour, and prepare it in some sort of way, sell the flour using the term "mill" or "milling" in their name? Do you know how many of those concerns analyze their flour for protein and ash content, or in any manner attempt in a scientific, way, to mix or analyze the flours and then mix them for sale?

A. No, sir.

X. 27. You do not know?

A. No, sir.

X. 28. The Nashville Roller Mills does?

A. Yes, sir.

X. 29. Do you know whether any others do?

A. No, sir.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

RD. 1. What is the final test of a flour, Mr. Graig?

A. Well, the final test of the flour is the actual baking.

RD. 2. That is the baking test?

A. Yes, sir.

RD. 3. That is so recognized, as the supreme test?

A. Yes, sir.

RD. 4. And anybody can do that, whether he maintains a laboratory or not?

A. Oh, yes.

Mr. Malone: That is all.

Recross-examination by Mr. Bane.

RX. 1. If he makes the baking test he can, but he has got to make the baking test before he can determine the baking qualities, is that right?

A. Yes, sir.

RX. 2. And in order to determine the baking quality, you have to make the baking test?

A. Sure.

RX. 3. And you just cannot take your flour to-day and bake it, one pan of bread, and determine whether it is uniform with the flour that has gone before, unless you have maintained a result, or kept the results of previous bakings from the same brand, and have analyzed that baking, can you?

A. Well, I do not suppose they could keep the actual baking test any length of time.

RX. 4. You have to keep them for some length of time to compare with others.

A. A baking test of yesterday and a baking test of to-day certainly would not be a comparison.

RX. 5. Why not?

A. Because the biscuit would be cold and hard.

RX. 6. But, if you made a baking test, looked at it on yesterday, and made your observation upon that, and noted that down and noted all of the tests that enter into the baking test, all of the observations, and then baked to day and made the same observations from the same grade of flour you are mixing or blending, you could compare those?

A. That would not make a mental comparison.

RX. 7. That would be more accurate?

A. Yes, because the biscuits you had on yesterday would not compare with those made to-day.

RX. 8. But, if you take biscuits made on yesterday and made observations upon their character, etc., of those biscuits and noted those down—

A. Yes, sir.

RX. 9. And then to day you bake and note these down?

A. Oh, yes, sure.

RX. 10. You can keep a record in that way, and the only way you can keep it, is not it?

A. Not the only way, you have the analysis too, make the anslysis of the various lots of flour, you have that, but the final baking test is the actual test.

RX. 11. I am talking about using the final baking test.

A. Yes, sir.

RX. 12. You have kept a record of the observations of the baking test?

A. Yes, sir.

RX. 13. You have to do that to keep it uniform, otherwise the baking test of to-day, look at it and see how good the biscuit are and one next week, it would not amount to anything?

A. No, sir.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Mr. Graig, from your travels in the field, having in mind the distinction you have just made in answer to Mr. Bane's question about mixers and blenders, what is the opinion as to what the concerns in Nashville are classified, are they classed more as mixers or blenders under your classification?

A. Well, they are really referred to more as mixers in my territory.

Mr. Bane: Referred to by whom?

A. By the competitive salesmen.

Mr. Bane: How does the buyer refer to them, as mixers or blenders?

A. Some blenders, some mixers, although they are under the impression that one is the same as the other because they give it very little thought, because all the jobber talks about is the price, the quality and the grade, He does not question the term any more than the kind of patent on flour. They do not give it any thought, the majority of them do not, unless the point is actually brought out to them.

Mr. Bane: And when you said some of them, you mean not some of the concerns here, but the buyers in the field?

A. Yes, sir.

Mr. Bane: Some call them mixers and some call them blenders?

A. Yes, they have the same impression.

W. P. Graig Eldredge Bryant

Examiner Sheppard: Anything else, Mr. Malone?

Mr. Malone: That is all.

Witness Excused.

Mr. Malone: I think if it suits, we will take a recess.

Examiner Sheppard: All right, until two o'clock.

(The hearing thereupon adjourned at 12.40 p. m. until 2.00 o'clock p. m. this date.)

Docket No. 1601.

Nashville, Tennessee, January 13, 1930.

Met pursuant to adjournment, 2:00 o'clock P. M.

Before:

William W. Sheppard, Examiner.

Appearances:

Baldwin B. Bane, for the Commission.

Thomas H. Malone, Jr., for the Respondents.

ELDREDGE BRYANT, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you reside?

A. Collinwood.

Q. 2. Collinwood, Tennessee?

A. Yes, sir.

Q. 3. How far is that from Nashville?

A. One hundred twenty miles by dirt.

Q. 4. What is your business?

A. Mercantile.

Q. 5. Do you run a store there in Collinwood?

A. Yes, sir.

Q. 6. Do you run a wholesale or retail store?

A. Retail.

Q. 7. Do you handle flour?

A. Yes, sir.

Q. 8. Plain or self-rising or both?

A. Both.

Q. 9. Which do you sell the most of?

A. I sell the most of plain, I expect.

Q. 10. Mr. Bryant, in buying flour, who have you patronized, what producers here in Nashville?

A. Well, F. J. McCarthy and the Wautaga, which was F. J. McCarthy, all bills come together. Now, it is

Wautauga, and a part of the time may be all the time, at the present and the Empire, and Royal Milling Company, either one of those that is all the same.

Q. 11. Yes. You mean the Empire is just another name for the Royal Milling Company?

A. Yes, I buy from both.

Q. 12. So you buy from the F. J. McCarthy and the Wautaga Milling Companies?

A. Yes, sir.

Q. 13. And from the Empire Milling Company?

A. Or Royal, either one.

Q. 14. Or the Royal.

A. Yes, sir.

Q. 15. Now, Mr. Bryant, in buying your flour, does it make any difference to you, whether the concern has the word "mills" or Manufacturer in its name or in its literature?

A. Well, the customer just comes in and calls for it by the name of the flour.

Q. 16. So, it makes no difference to you?

A. Not a bit in the world, with me.

Q. 17. Well, does it make a difference? What do you buy for, which do you try to get when you buy?

A. I try to get the quality, worth the money.

Q. 18. You try to get the quality stuff and worth the money?

A. Yes, sir; that is right.

Q. 19. And what about satisfaction to your trade?

A. Well, I haven't never handled any that don't. If it don't I just handle it one time and just quit that, that is the way I do that.

Q. 20. So, you want price and quality and stuff that gives satisfaction to your trade?

A. Yes, sir; that is right.

Q. 21. And if you get that, you do not care what the man calls himself?

A. Not a bit in the world; no, sir.

Q. 22. And whether he calls himself a miller, a blender, a manufacturer or what?

A. No, sir.

Q. 23. Do you understand, and did you understand when you were purchasing the flour that McCarthy and the Wautaga Milling Company and the Royal Milling Company and the Empire Milling Company were blenders?

A. No, sir, I didn't. I didn't make no inquiry, none whatever.

Eldredge Bryant

Q. 24. It made no difference to you whether they were blenders or millers?

A. Not a bit.

Q. 25. What you wanted, was a flour that satisfied your trade at the right price, and about the right quality?

A. That is it, yes, sir.

Q. 26. What does your trade ask for, how do they buy flour?

A. They just come in and ask for the name of the flour.

Q. 27. Just like they ask for the name of the coffee, or anything else in your store?

A. Yes, sir.

Q. 28. How long have you handled Mr. McCarthy's products?

A. Since I have been in business, twenty-five months. My father was selling the flour before I taken his business.

Q. 29. I see, you succeeded your father there in business at Collinwood?

A. Yes, sir.

Q. 30. And he was handling the Wautauga line and the Empire milling Company's line and you just succeeded him in that?

A. I won't be positive about the Empire, whether he ever handled that or not.

Q. 31. But you have been handling it?

A. Yes, sir.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. How large a town is Collinwood, Tennessee?

A. It is a small town, thirteen business houses at the present time.

X. 2. Can you tell me approximately the population?

A. Well, it would just be a rough estimate. I have no idea.

X. 3. What would that be?

A. About five hundred, I guess.

X. 4. Do you have a large store or a small store?

A. A small store.

X. 5. Any other large stores in Collinwood than your store?

A. Yes, sir.

X. 6. Are you the smallest store in Collinwood?

A. No, sir.

X. 7. Do you handle any thing other than groceries?

A. Yes, sir.

X. 8. A general store?

A. Yes, sir.

X. 9. What percentage of your trade, Mr. Bryant, is made up of darkies?

A. Not any.

X. 10. You do not have any darkie customers?

A. There ain't but one darkie that lives in our whole settlement.

X. 11. In the whole town of Collinwood?

A. Yes, sir.

X. 12. Don't you have a country trade?

A. Yes, sir.

X. 13. What are they darkies or white?

A. White people.

X. 14. The F. J. McCarthy flour, I believe you said, was satisfactory to you?

A. Yes, sir.

X. 15. And satisfactory to your trade?

A. Yes, sir.

X. 16. That concern grinds the wheat into the flour that it sells you?

A. Well, I don't know about that.

X. 17. You do not know?

A. No, sir.

X. 18. But, it is your understanding that it does, isn't it? It is called the F. J. McCarthy Milling Company, is not that the name of it, the F. J. McCarthy Milling Company?

A. Yes, I think that is the name of it, the F. J. McCarthy Milling Company.

X. 19. The F. J. McCarthy Milling Company. You would understand from that, that they made the flour they sold you, ground the wheat into flour, would not you?

A. Well, I never made any inquiry about that.

X. 20. No. But, that is what the name means, isn't it?

A. Yes, I should think so.

X. 21. And the same thing is true with the Wautaga Milling Company?

A. Yes, sir.

X. 22. And the same thing is true of the Empire Milling Company?

A. Yes, sir.

X. 23. And the Royal Milling Company?

A. Yes, sir.

X. 24. Did you tell us how long you had been in business?

A. Yes, sir.

X. 25. Twenty-five months, was that how long you have been in business?

A. Yes, sir.

X. 26. Were you in business before with your father?

A. No, sir.

X. 27. When did you learn that the F. J. McCarthy Milling Company and the Wautaga Milling Company were the same concern, Mr. Bryant?

A. Just by gttting the bills for my flour.

X. 28. And they would be billed on the two names, they would appear on the bill?

A. No, sir; just one at a time.

X. 29. How did that tell you they were the same concern?

A. One order would be for F. J. McCarthy and may be the next or the next would be Wautaga.

X. 30. You were placing the orders with the same people all the time?

A. Yes, sir.

X. 31. How did you learn the Empire Milling Company and the Royal Milling Company were the same concern?

A. By the same way, with my bills.

X. 32. Because you would get—

A. Notice the heading of the bills is all.

X. 33. The heading of the bill does not contain both names, does it?

A. Yes, sir.

X. 34. It does?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Mr. Malone: All right. Stand aside.

Witness excused.

J. P. ROGERS, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Rogers, you reside in Nashville?

A. Yes, sir.

J. P. Rogers

Q. 2. What is your business?

A. Grocery business.

Q. 3. How long have you been a grocer?

A. Well, about, a little over four years this last time.

Q. 4. Are you a retail grocer?

A. Yes, sir.

Q. 5. Do you handle flour as a part of your business?

A. Yes, sir.

Q. 6. Plain or self-rising, or both?

A. I handle both of them.

Q. 7. Which do you sell the most of?

A. I sell more plain flour than I do self-rising.

Q. 8. What flours do you handle?

A. Mighty near all of them, Flora, Martha White, Queen of the Pantry, Gloria, Polly Rich,—leave out the Gloria, I have not got it. I used to handle it.

Q. 9. Have you handled Gloria?

A. I have handled it, yes, sir.

Q. 10. Do you buy flour from the Wautaga Milling Company or the F. J. McCarthy Milling Company?

A. I have bought from the Wautaga.

Q. 11. How long have you been buying flour from the Watauga?

A. Well, I have not bought any from him in, I don't know exactly how long it has been, but I bought from him as long as he used to sell the city, but he quit selling around in the City. I don't know exactly how long it has been since I bought.

Q. 12. You bought from him as long as he was selling the city trade?

A. Yes, sir.

Q. 13. Was that flour satisfactory?

A. Perfectly satisfactory, yes, sir.

Q. 14. Satisfactory to your customers?

A. Yes, sir.

Q. 15. Mr. Rogers, in buying flour does it make any difference to you whether the concern uses the word "mills" or "milling" or "manufacturer" in its name or literature?

A. No, sir.

Q. 16. What do you buy, what influences you in buying?

A. The price, the quality, mostly.

Q. 17. And what about satisfaction to your trade?

A. Satisfaction to my trade, too.

Q. 18. So, if a concern makes you the right price, gives you good quality, that is satisfactory to your trade,

you do not care whether it is made by a miller, a blender or who, or what the name is?

A. No, sir.

Q. 19. When you were buying Mr. McCarthy's flour, did you know that he did not have a grinding mill?

A. Yes, sir.

Q. 20. You knew he was what is called a blender, you knew that, did you?

A. Yes. sir, I knew he didn't have any mill.

Q. 21. How do your customers buy flour. Mr. Rogers?

A. Well, they just come in and call for a sack of flour, a lot of them, some of them call for different brands. Some call for self-rising flour, if they do not particularly call for any brand.

Q. 22. What they want is a satisfactory flour at a fair price.

A. Yes, sir.

Q. 23. And if a brand suits them, they come back and ask for it again, is that right?

A. Yes, sir.

Mr. Malone: All right, cross-examine.

Cross-examination by Mr. Bane.

X. 1. You said you have been in business four years this last time. Mr. Rogers, what do you mean by that?

A. Well, I was in business before the war.

X. 2. You mean before the last war, the World War?

A. Yes, sir.

X. 3. What kind of business were you in then?

A. I went out to the farm, but I was in the grocery business then.

X. 4. Where?

A. In Nashville.

X. 5. Then you sold out?

A. Yes, sir.

X. 6. And went out to the farm?

A. Yes, sir.

X. 7. Four years ago, approximately four years ago, you came back to town and started a grocery business again?

A. Yes, sir, to keep from starving to death I come back to town.

X. 8. During which of the periods was it that you handled the product of the Wautaga Milling Company, when in business before or the last time?

A. This last time.

X. 9. Did you handle it before?

A. No, sir.

X. 10. Did you know the Wautaga Milling Company before?

A. Yes, sir, I knew Mr. McCarthy, he traded with me when I was in business before on West Tenth.

X. 11. You stated you did not buy flour from him before?

A. I didn't buy flour from him before, but knew him before.

X. 12. When did you find out that the Watauga Milling Company did not have a mill?

A. I knew he never did grind any flour, that I ever did know anything about. If he ever ground any flour, I never knew anything about it.

X. 13. You never knew anything about it?

A. No, sir.

X. 14. Had not you heard of the Wautaga Milling Company before you learned that it did not grind wheat into flour?

A. I just knew that was the name it went under.

X. 15. The Wautaga Milling Company?

A. Yes. sir.

X. 16. But had not you heard of that concern before you learned it did not grind wheat into flour?

A. No, I had been knowing the Wautaga Mills Company a long time.

X. 17. What does the word "Mills" or the word "milling", Mr. Rogers, when used in the name of a concern selling flour, mean or indicate as to the character of that concern? Suppose I came in and said to you, "I want to sell you some flour," and tell you I am representing the Eureka Mills or the Eureka Milling Company, we will say, what kind of concern would you think I was representing?

A. I would suppose you were representing a milling concern.

X. 18. That is, a concern grinding the wheat into flour, that is what you would think, would not you?

A. I suppose so.

X. 19. You know whether you would. Now, don't you think, Mr. Rogers, it is cheaper for the same quality of product, to buy directly from the concern that makes the product, like flour, a concern that buys the wheat and grinds it into flour, for the same grade and quality, rather than from a concern that buys from some one else who makes it, then hauls it to his place of business and puts

it through some kind of preparation, at least unsacks it and resacks it, and then sells it to you again? Don't you think when you get it direct from this other man, that he ought to give you a better grade of flour for the same price, because you are getting it in that way and cutting out the middle man?

A. Well, you can get better prices out of town than you can in town.

X. 20. You can?

A. Yes.

X. 21. Right here?

A. Yes.

X. 22. You can get a better price from some of the outside concerns you understand grind the wheat into flour than you can from the concerns right here in the city?

A. Yes.

X. 23. What other concerns are there in the city that you buy from, other than the Wautaga Milling Company?

A. Well, we have got the Royal Mills, the Liberty Mills, I forgot what is the name of the Polly Rich Milling Company.

X. 24. Is the Polly Rich a flour made right in the city?

A. I don't know whether it is made in town or not.

X. 25. Now, going back then to my question that I first asked, would not you think, and don't you think that you can get a better quality and grade of flour, at a better price, by buying directly from the concern grinding the wheat into flour; than you can from a concern that buys the flour from a concern grinding the wheat into flour, hauls it to its place of business and there puts it through some kind of process, resacks it and sells it to you, don't you think by cutting out the middle man you can get better prices?

A. They do not make better prices.

X. 26. Sometimes they do not and sometimes they do?

A. No, they are always a little higher than the other fellow.

X. 27. I don't understand. I want to get you straight, and only want to get you straight. Did I understand you to say that you bought from concerns right here in town, those three you named, the Wautaga Milling Company, the Royal Milling Company and the Liberty Mills cheaper than from an outside concern?

A. Oh, I buy the Queen of the Pantry from Robert Orr, that comes from Missouri.

X. 28. You mean you get that flour cheaper that you can right here in town?

A. That is that grade.

X. 29. That is what I mean.

A. Yes, sir.

X. 30. Do you know whether or not Queen of the Pantry is put up by a milling concern, or a blending concern?

A. No, I do not know.

X. 31. What I am getting to, I don't understand,—because I understand most of the concerns whose brands you gave were concerns outside of town, gave you better prices than the concerns in town which are not milling concerns.

A. Figuring on those high grades, Gold Medal and Queen of the Pantry.

X. 32. And both comes from milling concerns, don't they?

A. I suppose so.

X. 33. That is your understanding, anyhow, isn't it?

A. Yes.

X. 34. All right. Now, that is a cheaper flour, as I understand it, to you, then the flour that you get of the same grade, if you can get the same grade, from the Wautaga Milling Company right here in town, is that correct? That is what I understand you to say. I want to get you correct.

A. That quality of flour.

X. 35. That is what I mean, that quality of flour.

A. Yes, that quality of flour.

X. 36. So, as I understand it, you do get the flour from the milling concern in your own experience, cheaper than you do that same quality, of course, from a blending concern?

A. I don't think there is but about one blending concern in town. The only one I know of is the Liberty Mills.

X. 37. And the Southland Mill and Elevator does a little milling?

A. I don't know.

X. 38. The Royal Milling Company grinds the wheat into flour it makes?

A. I don't know.

Mr. Bane: That is all.

J. P. Rogers

Redirect Examination by Mr. Malone.

RD. 1. Mr. Rogers, is not that Queen of the Pantry about the highest priced flour you buy?

A. That is the highest priced I buy, yes, sir.

RD. 2. So, you do not pay less for that than what you buy from Mr. McCarthy?

A. No, sir.

RD. 3. You do not pay less for that than you do for Mr. McGraw, Royal Milling Company flour?

A. No. They all come cheaper than the Queen of the Pantry. The Queen of the Pantry is the highest flour made.

RD. 4. So, you do not mean to say you get better prices on Queen of the Pantry and all of these out-of-town flours?

A. No, I was speaking of Gold Medal, that is made up in Franklin, Kentucky.

RD. 5. What is the name of the concern?

A. I don't know the name of it.

RD. 6. You do not know the name of the company?

A. No, sir. I have not handled much of it.

RD. 7. So, you do get a better price on the flour you buy right here in Nashville?

A. I do from Mr. McCarthy. I get the best prices on his than any other flour I have bought. I always handled that on my sales.

RD. 8. So, on the quality of flour, you get a better price from Mr. McCarthy than you did any body else?

A. Yes, sir, his flour, as long as I handled it, I got a better price than anybody's and I pushed that flour then.

Mr. Malone: All right.

Recross-examination by Mr. Bane.

RX. 1. That Queen of the Pantry flour you speak of as being so high priced, it is a better grade of flour than any flour you got from the Wautaga Milling Company or the Royal?

A. It is a higher patent flour.

RX. 2. A higher grade flour?

A. Yes, sir.

RX. 3. And actually sold at a premium, recognized as a premium priced flour?

A. Yes, I got twenty-five cents a sack more for it than any other.

J. P. Rogers V. J. Rottero

RX. 4. What concern puts out the flour in Franklin, you refer to? Do you know the name of the concern?

A. I don't believe I can tell you now.

RX. 5. You do not remember the name of it?

A. No, I do not.

RX. 6. When did Mr. McCarthy stop selling to the city trade?

A. Why, six or eight months ago.

RX. 7. By the City trade, you mean the trade in the city of Nashville?

A. Yes, sir.

RX. 8. Do you know why he stopped selling to the city trade?

A. They would not pay him.

RX. 9. He said what?

A. They would not pay him.

RX. 10. Would not pay him the price for his flour?

A. No, sir, would not pay him anything.

RX. 11. Do you mean by that, everybody in the City of Nashville owed Mr. McCarthy and all refused to pay him?

A. I don't know. I paid my own. I think lots of they would not pay him?

RX. 12. He left the impression on you, then, that they would pay him?

A. I called him up one day and asked him what is the matter your drummer has not come around. He said, I have abolished the city trade. I said, what is the trouble?

RX. 13. In other words, the impression he left on you was, he stopped because no grocery store in town would pay his bill?

A. I don't think all of them, I paid my own.

RX. 14. Do you think that is a fair accusation against the grocers in the city of Nashville, that they won't pay their bills?

A. A whole lot of them are that way.

RX. 15. A lot of them do pay their bills?

A. Yes, sir.

Mr. Bane: That is all.

Witness Excused.

V. J. ROTTERO, was thereupon called as a witness, and having been duly sworn, testified as follows:

V. J. Rottero

Direct Examination by Mr. Malone.

Q. 1. Your name is V. J. Rottero?

A. Yes, sir.

Q. 2. What is your occupation, Mr. Rottero?

A. Grocery business, retail grocer.

Q. 3. How long have you been in the retail grocery business?

A. Seventeen years.

Q. 4. Where?

A. Where?

Q. 5. I say in Nashville?

A. Nashville, yes, here in the city.

Q. 6. Do you sell flour?

A. Yes, sir.

Q. 7. Plain, or self-rising, or both?

A. Both.

Q. 8. What do you think you have the most call for here in Nashville?

A. Well, I believe I sell more plain than I do self-rising.

Q. 9. What flours do you handle, Mr. Rottero?

A. Well, we handle the Martha White, Gloria, Tip Top, Polly Rich, Flora, Dauntless.

Q. 10. So, one of the flours you handle is Gloria, who makes that?

A. Nashville Roller Mills.

Q. 11. Has that proved satisfactory as a flour?

A. Yes.

Q. 12. Satisfactory to your trade?

A. Yes.

Q. 13. Mr. Rottero, are you influenced by the use of the word "mills," "milling" or "manufacturer" in connection with the producer of flour, does that influence you in buying?

A. No, sir.

Q. 14. Well, what does influence you?

A. Well, my trade calls for flour by the name, the name of the flour, such as Gloria, Flora, Martha White, Tip Top, in other words the kind of flour they want, that is what they call for, by the name of the flour.

Q. 15. And you want to get a flour that suits your trade when they call for it?

A. Yes.

Q. 16. Does the price and quality influence you in buying?

A. It is the quality and the satisfaction that it gives to the consumer.

Q. 17. And you found that this Gloria, Flora, Martha White, Tip Top, that they all give satisfaction to your trade?

A. Yes, sir. If they did not I would not handle them.

Q. 18. Mr. Tupper, I believe you say, makes the Gloria. Who makes the Martha White?

A. The Royal Milling Company.

Q. 19. Mr. McGraw's plant?

A. Yes, sir.

Q. 20. Who makes the Tip-Top?

A. The Cherokee Mills.

Q. 21. Mr. Faircloth?

A. Mr. Faircloth.

Q. 22. Are they also called blenders?

A. Yes, sir.

Q. 23. Do you know, in handling their flour, that they did not grind the wheat into flour?

A. Yes, sir.

Q. 24. That made no difference to you?

A. No, sir.

Q. 25. Nor, so far as you know, to any of your customers?

A. No, sir.

Q. 26. I believe you say your customers just come in and ask for the brand of flour they like, like they would a brand of coffee, a brand of canned goods, anything else?

A. That is right.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. What section of the City is your store located in, Mr. Rottero?

A. Kind of the northwestern section, from here.

X. 2. The northwestern section.

A. In other words, it is on Twelfth and Joe Johnson.

X. 3. Is that in a residential section?

A. Yes, sir.

X. 4. What character of residential section?

A. Well, the particular place where I have my store, it is cheap, mostly colored, but my trade, my best trade is all on the wire.

X. 5. All on the what?

A. On the wire, on the telephone.

X. 6. Your grocery store is located in what might be called a poorer section of the town?

A. Yes, my store is.

X. 7. And the largest portion of your trade is in that same section, is not it?

A. No, sir.

X. 8. Do you mean you do not trade with the people located in the section where you live, have your store, I mean?

A. No, sir. When I first went down there seventeen years ago, it was there, but those folks moved out and cheaper folks have taken their places, therefore my same trade I did have at that time moved away, so they just got out in a better section of town.

X. 9. What proportion of your trade is with the darkies?

A. About thirty-five to forty per cent.

X. 10. What proportion of your trade is with white laborers?

A. Well, all my trade is practically with the laboring class.

X. 11. All of it?

A. A good portion of it.

X. 12. Who makes the Polly Rich flour, do you know?

A. The Colonial Milling Company.

X. 13. Where?

A. Out in south Nashville.

X. 14. Is that concern a grinding mill?

A. I could not tell you. I don't know whether they grinding wheat or not.

X. 15. Who makes the Flora brand of flour?

A. The Liberty Mills.

X. 16. They grind the wheat into flour, don't they?

A. They used to. I don't know whether they do or not.

X. 17. The Dauntless?

A. The same men.

X. 18. The Liberty?

A. Yes.

X. 19. What kind or what grade of flour is that, by that I mean is it patent, short patent, long patent, clear, straight or what character of flour is the Martha White flour?

A. Just a good patent flour is all I know.

X. 20. Is it a patent flour, I want to know. If you know, tell me.

A. Patent flour.

X. 21. Has it got patent flour on the sack?

A. Yes, sir, patent flour.

X. 22. Is it short patent, long patent or does it say?

A. I have not gone into that.

X. 23. What is Tip Top, a patent, straight or plain?

A. In my estimation about the same thing.

X. 24. They have it on the bag.

A. Patent is all I remember, is patent. I don't remember whether it is short, long, or not.

X. 25. Now, the Gloria, is what kind of flour?

A. Also a patent.

X. 26. What is the Polly Rich?

A. It is also a patent, I reckon, they are all about the same grade.

X. 27. The Polly Rich does not it have on the sack, short patent flour?

A. I could not say.

X. 28. What about the Flora?

A. I never paid so much attention.

X. 29. Is that a patent flour?

A. I just remember the word "patent" on there, is all I know.

X. 30. Is not Polly Rich flour a higher grade of flour than the Martha White, or the Tip Top flour?

A. I could not tell you that.

X. 31. You could not tell me?

A. No, sir.

X. 32. When did you learn that the Nashville Roller Mills did not grind wheat into flour that it sold?

A. When did I learn that they did not grind?

X. 33. You just said that they did not.

A. That they did not grind?

X. 34. Yes?

A. Yes.

X. 35. All right, when did you learn that they did not?

A. I always did know that they did not.

X. 36. How did you know it?

A. I don't think there was but one grinding mill in the city of Nashville, that was the Liberty Mills.

X. 37. Only grinding mill. Did not you know the Southland Mill & Elevator Company grinds wheat?

A. They did some time back.

X. 38. Don't you know they do now?

A. I don't know.

X. 39. You do not know the Liberty Mills grinds now?

A. I don't know for sure that they are grinding.

X. 40. Was the Nashville Roller Mills in existence when you started in business here?

A. No, sir.

X. 41. It was not?

A. No, sir.

X. 42. Seventeen years ago it was not in business?

A. No, sir, not the Nashville Roller Mills.

X. 43. Now, when did you first hear of the Nashville Roller Mills? What kind of concern did you think it was?

A. I don't know. I had not thought much about it. All I know, it was just a flour packing concern.

X. 44. In other words, you thought it was a flour packing concern when you first heard of it?

A. Yes. I knew they were not no millers.

X. 45. In other words, if a man comes up to you as representing a milling concern, or mills, calling themselves the Sunnyside Mills, or the Sunnyside Milling Company, you think he is a packer, is that what you mean?

A. I guess so.

X. 46. You think because he uses the word mill or milling, he is a packer of flour, only?

A. Yes.

X. 47. That is what you think?

A. Yes.

X. 48. Because he uses the word "mill" or "milling," in his name, he is a packer of flour, only?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

RD. 1. You knew Mr.. Tupper's mill, the Nashville Roller Mills, was a blender, you knew that?

A. Yes, sir.

Mr. Malone: That is all.

Witness Excused.

J. E. Campion, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. What are your initials, Mr. Campion?

A. John E.

J. E. Campion

Q. 2. John E. Campion?

A. Yes, sir.

Q. 3. Where do you live?

A. Nashville.

Q. 4. What is your business?

A. Manager, Piggly-Wiggly Stores.

Q. 5. What is the Piggly-Wiggly Stores, chain stores?

A. Chain stores, yes, sir.

Q. 6. Do you buy and handle flour?

A. Yes, sir.

Q. 7. Plain or self-rising or both?

A. Both.

Q. 8. What flours do you handle, made or put out by any Nashville concern?

A. Well, the Martha White, by the Royal Milling Company; the Gloria by the Nashville Roller Mills; the Polly Rich by the Colonial Milling Company, and the Flora and Superlative distributed by the Moore-Hooton Flour Company.

Q. 9. Yes, sir; made by the Liberty.

A. Yes, sir; made by the Liberty.

Q. 10. That is a flour put out by them?

A. Yes, sir.

Q. 11. This flour you handle from the Royal Milling Company and Nashville Roller Mills, does that give satisfaction to you and to your trade?

A. Yes, sir.

Q. 12. How long have you been handling that?

A. Well, about seven or eight years.

Q. 13. Each one of them?

A. Yes, sir.

Q. 14. In buying flour, Mr. Campion, are you influenced by the use of the word "mill" or "milling" or "manufacturer" in the trade name or literature of the producer?

A. You mean am I interested in whether it is manufactured or whether it is milled?

Q. 15. Whether it is blended or whether it is milled?

A. No, that is not an influence.

Q. 16. And the mere fact of the name cuts no figure with you, that is, whether the man calls himself a manufacturer, a blender or what he calls himself?

A. No, sir.

Q. 17. What does influence you in buying?

A. All that influences me in buying is the consumers' acceptance, and the quality and price.

Q. 18. You want a satisfactory flour, at the right price, and of a quality satisfactory to your trade?

A. Yes, sir.

Q. 19. And those are the main elements that do influence you?

A. Yes, sir.

Q. 20. How does your trade buy flour, Mr. Campion, do they come in and ask for a particular brand? How is that?

A. Yes, we have them to come in and ask for particular brands.

Q. 21. Just like they ask for other goods that you carry?

A. Yes, sir.

Q. 22. Maxwell House Coffee, Arbuckles Coffee?

A. That is right.

Q. 23. And various kinds of canned goods?

A. Yes, sir.

Q. 24. They ask for it by name?

A. Oh, yes.

Mr. Malone: All right, cross-examine him.

Cross-examination by Mr. Bane.

X. 1. How long have you been manager of the Piggly-Wiggly Stores, Mr. Campion?

A. Going on eight years.

X. 2. All that time here in Nashville?

A. Yes, sir.

X. 3. Were you in the grocery business prior to that time?

A. No, sir.

X. 4. Were you in Nashville prior to that time?

A. Yes, sir.

X. 5. How long have you lived in Nashville?

A. Thirty-eight years.

X. 6. I judge that is your whole life?

A. Yes, sir.

X. 7. Perhaps you can tell me, Mr. Campion, what grade of flour is the Martha White Flour, is it a short patent, a long patent, just a clear flour, a straight flour, or what?

A. I think they class it as a short patent flour.

X. 8. You think they do. Do you know?

A. Well, they call it a patent flour.

X. 9. What about the Gloria?

A. It is about the same.

X. 10. What about the Polly Rich?

A. Practically the same.

X. 11. What about the Flora and the Superlative?

A. My opinion, I think they are practically all the same.

X. 12. Practically all patent flours?

A. Yes, sir.

X. 13. Any one of them, so far as you know, distinguished from the others, to be classed as a short patent?

A. Not that I know of, no, sir.

X. 14. Do you buy the flour, Mr. Campion?

A. Yes, sir.

X. 15. Do you sell flour, that is, do you come in contact with the trade, take any part in the actual sales?

A. No, sir, I do not.

X. 16. You do not wait on customers?

A. No, sir.

X. 17. You do not come in contact with your trade?

A. No, sir.

X. 18. When did you learn, Mr. Campion that the Royal Milling Company did not grind wheat into the flour that it was selling?

A. Well, I don't know that I ever learned it, I was not that much interested in it. I will be frank with you, I was selling flour, just what the people wanted.

X. 19. How did you know you wanted that flour, bake it, test it, try it?

A. No, I put it in the store. I had calls for the different brands of flours. I did not care whether they blended, ground or what, just so the people took it out when I put it in there.

X. 20. You had to put it in the store to try it?

A. Yes, sir.

X. 21. To try it, to see whether your concern wanted to buy?

A. That is right.

X. 22. When you went to buy from that concern, the Royal Milling Company, what kind of concern did you think that was?

A. I knew it was not a grinding concern.

X. 23. You did. How did you know it?

A. How did I know it was not a grinding concern?

X. 24. Yes?

A. I understood there was not but one grinding concern in town, that I ever knew of. There used to be one out in North Nashville, that I knew, the Liberty Mill, or at least I was informed that it was. I never had investigated it that closely.

X. 25. You thought the Royal Milling Company was not a milling concern, solely because you have lived in Nashville all your life, and understood about things in Nashville; and understood none of the concerns, regardless of what they were called, actually ground the wheat into flour, outside of the Liberty Mills, is that right?

A. That is true.

X. 26. The same thing is true of the Nashville Roller Mills?

A. That is true.

X. 27. Who makes the Polly Rich?

A. Colonial Milling Company.

X. 28. Don't they grind?

A. I do not know.

X. 29. From what you understand, they are just a blending concern, since you know of only one milling concern?

A. I will tell you about the flour, as I told you at first I seek the line of least resistance, and take the consumers acceptance, do you understand.

X. 30. You told us all about that. You referred to the fact that you understood some of these concerns were blenders, you knew they were blenders. What do you mean by blenders?

A. Ones that will take—well, as far as a blender is concerned in my opinion, a blender could be a manufacturer, as well as a blender.

X. 31. Just answer my question, please.

A. He buys flour from some one else, grinding mill, gets it in, mixes it and puts it into the flour he wants.

X. 32. Have you ever heard of what they call a mixer of flour?

A. A mixer of flour?

X. 33. Yes?

A. No, I have not.

X. 34. You have never heard of any concern called a flour mixer, rather than a flour blender?

A. No, sir.

Mr. Bane: That is all.

Examiner Sheppard: Mr. Campion, one question. In the early part of your examination you used the words manufacturing and milling, do you draw any distinction between the two?

A. No, sir.

Examiner Sheppard: All right.

J. E. Campion John Coode

Redirect Examination by Mr. Malone.

RD. 1. Do you pay more for Gloria and Martha White, than you do for the Liberty Mills flour?

A. No, sir.

RD. 2. Do you understand how self-rising flour is made?

A. Well—

RD. 3. If you do not just say so.

A. No.

Mr. Malone: That is all.

Mr. Bane: You do not understand how flour is blended, either, do you?

A. Well, I would not say that I would, but I doubt whether I can answer that question. I have got a faint idea of that, but I cannot answer that question.

Mr. Bane: That is all, Mr. Examiner.

Witness Excused.

JOHN COODE, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Coode, do you live in Nashville?

A. Nashville.

Q. 2. What is your business?

A. I am in the grocery business.

Q. 3. How long have you been in the grocery business in Nashville?

A. Thirty-nine years.

Q. 4. With what company or concern are you connected?

A. Crone & Jackson.

Q. 5. Retail or wholesale?

A. Retail.

Q. 6. Do you buy flour, Mr. Coode?

A. Yes, sir.

Q. 7. Plain or self-rising?

A. Both.

Q. 8. Do you handle any flour produced by Nashville concerns?

A. Yes, sir.

Q. 9. What?

A. We handle the Flora, Gloria, Martha White, and Polly Rich.

Q. 10. Who puts out the Gloria flour?

A. The Gloria flour, Mr. Tupper of the Nashville Roller Mills.

Q. 11. Who puts out the Martha White?

A. The Martha White, the Royal Milling Company.

Q. 12. Mr. McGraw?

A. Yes, sir.

Q. 13. Have you found those flours satisfactory to yourself and to the trade?

A. Yes, sir.

Q. 14. How long have you been using them, Mr. Coode?

A. Well, I would say twenty-five years out of thirty-nine. I used to be in the tea and coffee business, and did not handle flour the first part of my career, but probably twenty-five to twenty-six years ago I handled flour, in the three concerns since that time, we have all handled flour.

Q. 15. Mr. Dick Lindsay had the Martha White ahead of you?

A. Yes, sir.

Mr. Bane: Was it called the Royal Milling Company then?

A. Yes, I think so.

Q. 16. Now, Mr. Coode, in buying flour are you influenced by whether the word "mill" or "manufacturer" or "mills" is used in the trade name or literature of the concern from which you buy?

A. No, sir.

Q. 17. Are you interested in whether it is made by a so-called miller, that is one who grinds the wheat into flour, or the so-called blender?

A. No, sir.

Q. 18. What does influence you in buying?

A. Consumer demand.

Q. 19. And the price and quality?

A. Certainly.

Q. 20. So long as they are right, the name makes no difference to you, or the maker?

A. Not a bit in the world.

Q. 21. How does your trade buy flour, Mr. Coode?

A. A great majority of them specify the brands they desire.

Q. 22. Just as they would coffee?

A. I should say sixty-five to seventy per cent tell me what brand they want. If you do not send that they will send it back and get what they do want.

Q. 23. And they call for Polly Rich, Gloria, Martha White, just as they want them?

A. At least sixty-five per cent specify them.

Q. 24. Just as they do for coffee?

A. Coffee and other canned foods.

Q. 25. Were you at any time the president of the Retail Merchants' Association?

A. Yes, sir.

Q. 26. I mean the American Retail Merchants' Association?

A. The National Association of Retail Grocers, a national organization, if you are defining it, yes, sir.

Mr. Malone: All right.

Cross-examination by Mr. Bane.

X. 1. When was that, Mr. Coode?

A. About two and a half years ago, sir.

X. 2. How long is the term of the president?

A. One year and I was popular enough to be re-elected, at least unpopular.

X. 3. So, they allow the re-election of the president?

A. Yes, sir.

X. 4. Have they the unwritten law that they can be president unly two terms?

A. No, sir; but that is long enough.

X. 5. Are you still president of it?

A. No, sir, I retired last June.

X. 6. How do the other forty per cent of your trade buy flour?

A. Well, I would not say forty. I said at least sixty, probably more, and the balance will call for a sack of good flour, twenty-four pounds of good flour.

X. 7. Just say any flour, is that it?

A. They would not specify, a great many will not specify.

X. 8. Don't some of them specify the name of the concern, or the one that puts the flour up?

A. No, sir, I do not know a single instance where they specify that, the brand is the name.

X. 9. You do not mean they specify the brand name?

A. They do specify the brand name, they want Gloria, or Flora.

X. 10. I understood you to say you did not know a single instance where they specified.

A. No, I said that forty per cent—

X. 11. Did not you say they did not specify the brand name, that you did not know a single instance?

A. No, sir, I said sixty per cent or better do specify the brand name.

X. 12. And the other forty per cent simply ask for any good flour?

A. No, they probably ask what brands we handle, and we will go over and enumerate them, we have five or six brands of flour.

X. 13. But, you do not know of any that ask for flour by the name of the concern that puts it up?

A. No, sir, except Pillsbury, Pillsbury flour, we handle Pillsbury flour, which is a strong white flour.

X. 14. They will call for Pillsbury flour?

A. Pillsbury flour.

X. 15. Do you wait on the trade?

A. Yes, sometimes when I have to. I am not keen about it, but I will do it. Yes, sir, I am right around on the floor and know what is going on.

X. 16. But you do not generally wait on the trade?

A. If the clerks are able to take care of it I do not, but if they get pushed, sometimes I come down.

X. 17. Don't you know, Mr. Coode, that whether it is well founded or not there is a prejudice among some consumers against what is called flour from blenders?

A. No, sir, I do not know that. It is possible in days gone by that it may have been so, but I do not think it is so at all to-day. I think the public understands it.

X. 18. You do not think so?

A. I don't think so, no, sir, that is my judgment.

X. 19. You say you have been buying flour from the Nashville Roller Mills for twenty-five years, I believe?

A. I said I had known Mr. Tupper and the Nashville Roller Mills—I should say, I don't know whether the name has been changed or not, but my judgment is that the Nashville Roller Mills has been in existence about, at least twenty-two to twenty-five years.

X. 20. That is, what I understood you had been buying from them for about twenty-five years?

A. Yes, sir.

X. 21. How long have you known that that concern did not grind wheat into the flour that it sold?

A. Well, sir, I do not know for my own information to-day, but it is possibly grinding a little, or have in the

past; but my judgment has been, I don't think they grind any wheat nor have for the last ten or fifteen years.

X. 22. When you first came in contact with them, you understood they were a grinding concern?

A. I happened to be one of the incorporators with Mr. Youngblood, predecessor to Mr. Tupper when he came to Nashville. My judgment is that they used to grind wheat, but I am not certain.

X. 23. How did you learn that they were not grinding wheat into flour?

A. I go out to the mills very often. I have not been out to that mill, probably for two or three years now.

X. 24. How did you learn the Royal Milling Company was not grinding wheat into the flour that they made?

A. Well, sir, I never was in their plant. I do not know that they do not, to tell you the truth.

X. 25. And you do not know that they do?

A. No, sir.

X. 26. Now the Flora brand is put out by the Liberty Mills?

A. The Liberty, yes.

X. 27. Do you know whether or not they grind wheat into flour?

A. No, sir.

X. 28. The Polly Rich is put up by the Colonial?

A. Yes, sir.

Q. 29. Do you know whether they grind wheat into flour?

A. I do not, no, sir.

X. 30. You do not?

A. I have never been in their mills.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

RD. 1. Pillsbury's Best is the brand name of the Pillsbury flour, is it?

A. Yes, sir, Pillsbury's Best is the brand's name.

Examiner Sheppard: All right, sir.

Witness Excused.

GEORGE J. SCHUTT, was thereupon called as a witness, and having been duly sworn, testified as follows:

George J. Schutt

Direct Examination by Mr. Malone.

Q. 1. Where do you live Mr. Schutt?
A. 1108 Sigler.
Q. 2. In Nashville?
A. Yes.
Q. 3. What is your business?
A. Grocery business.
Q. 4. Retail or wholesale?
A. Retail.
Q. 5. How long have you been in the retail grocery business?
A. Thirty-four years.
Q. 6. Do you handle flour?
A. Yes, sir.
Q. 7. Plain or self rising or both?
A. Both kinds.
Q. 8. Do you handle any flour put up by Nashville concerns?
A. Yes.
Q. 9. What?
A. I handle Gloria, Flora, Martha White, Tip Top, about all the Nashville flours.
Q. 10. Gloria is made by the Nashville Roller Mills?
A. Yes, sir.
Q. 11. Martha White is put up by the Royal Milling Company?
A. Yes, sir.
Q. 12. The Tip Top by the Cherokee Mills?
A. Yes, sir.
Q. 13. And Flora by the Liberty Mills?
A. Yes, sir.
Q. 14. Do you pay any more for these first three than you do for the Flora put up by the Liberty?
A. I pay the same price for all of them.
Q. 15. I mean the Flora put up by the Liberty Mills, you say the same price for all of them?
A. The same price for every brand.
Q. 16. Mr. Schutt, in buying flour are you influenced by the use of the word "mill," or "milling" in the concern's name?
A. No, sir.
Q. 17. Whether he calls himself a manufacturer or not?
A. No, sir.
Q. 18. What influences you in buying flour?
A. Well, I just buy the brand, that is well advertised, and the kind people call for and I can sell the best.

Q. 19. Exactly. You buy the brand that satisfies your trade?

A. Yes, sir, trying to satisfy my trade.

Q. 20. You consider, of course, the price and quality, also?

A. Oh, yes, yes, sir.

Q. 21. Have these brands put up by the Royal Milling Company, and the Cherokee Mills, and the Nashville Roller Mills, have they satisfied your trade?

A. Yes, sir.

Q. 22. How does your trade buy flour, Mr. Schutt?

A. Well, in twelves and twenty-fours.

Q. 23. Do they come in and ask—

A. And call for it?

Q. 24. Yes?

A. They come in and call for the brand they want.

Q. 25. And if the brand suits them, they come back and call for that again?

A. Yes, sir.

Q. 26. Mr. Schutt, you understand that Mr. Tupper, the Nashville Roller Mills don't grind wheat?

A. Yes, sir.

Q. 27. And that Mr. McGraw, of the Royal Milling Company, don't grind wheat?

A. Yes, sir.

Q. 28. And that Mr. Faircloth of the Cherokee Mills, don't grind wheat?

A. Yes, sir.

Q. 29. You understand that?

A. Yes, sir.

Q. 30. You understood that when you were buying the flour?

A. Yes, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. You understand the Liberty Mills does not grind wheat into flour?

A. I understand they grind their wheat.

X. 2. You understand the Liberty Mills grind their wheat?

A. Yes, sir.

X. 3. The flour you buy from them is the Flora?

A. Yes. I don't buy from them direct. They put it up and I buy it from Moore-Hooten Flour Company.

X. 4. That Flora flour you buy, is that a short patent?

A. I don't know whether they call it a short patent or not.

X. 5. What do the bags show?

A. Patent flour.

X. 6. Does not it say whether or not it is a short patent or a long patent?

A. I don't know that it does.

X. 7. The Gloria, what does the bag say about the Gloria, is it a patent flour or not?

A. It says something about the same thing.

X. 8. And is the Martha White a patent flour too?

A. Yes, sir.

X. 9. What about the Tip Top?

A. It is all about the same thing, the same grade of flour, has the same prices and I sell them to the trade about the same.

X. 10. They are all called patent flours, is that correct, on the bags?

A. Yes, sir.

X. 11. When did you learn that the Cherokee Mills did not grind wheat into the flour that they were selling?

A. I don't know when I learned it. I have been knowing it a long time.

X. 12. Could not you give us some idea when you learned it?

A. No, I have never bothered about that.

X. 13. How did you learn it?

A. I don't know. I just knew there was not but those Liberty Mills here putting up flour, and the Colonial Mills, we have had two mills in Nashville.

X. 14. However, you just knew there were only two mills grinding wheat?

A. Yes, sir.

X. 15. So, you knew the other concerns did not grind?

A. Yes, sir.

X. 16. You have been in business thirty-four years and in touch with business that long?

A. Yes, sir.

X. 17. What percentage of your trade is darkie trade?

A. I expect about twenty per cent.

X. 18. What class of people is the rest of your trade with?

A. Well, just medium class of trade, railroad people and the working classes.

X. 19. Railroad people?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.
Examiner Sheppard: Any thing else?
Mr. Malone: That is all.

Witness Excused.

JOHN T. HALL, JR., was then produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Is this Mr. John T. Hall?
A. Yes, sir.
Q. 2. Where do you live, Mr. Hall?
A. Birmingham, Alabama.
Q. 3. What is your business?
A. We run a general merchandise business.
Q. 4. Wholesale or retail?
A. Well, we sell wholesale and retail too, just run a good sized business there.
Q. 5. Do you handle flour?
A. Yes, sir.
Q. 6. Plain or self rising or both?
A. We sell both grades.
Q. 7. What do you sell the most of, plain or self-rising?
A. Self-rising.
Q. 8. More self-rising in your territory there?
A. Yes, sir.
Q. 9. Do you handle any flour produced by a Nashville concern?
A. We handle the Cherokee Mills, produced in the Birmingham plant.
Q. 10. I believe you say that the flour you buy, that you spoke of, is manufactured or put out by the Birmingham branch?
A. The first batch of flour we bought from them was bought from the Nashville plant. The plant was established in Birmingham afterwards, after the first order.
Q. 11. What flour is that, Tip Top?
A. Tip Top, yes, sir.
Q. 12. How long have you been handling that flour?
A. It has been, I guess six or seven years. Five or six years, I could not say how many years, exactly.
Q. 13. Some years back?
A. Yes, sir.
Q. 14. Has it given satisfaction?

A. Yes, sir; entirely satisfactory.

Q. 15. Satisfactory to your trade?

A. Yes, sir.

Q. 16. When you buy flour, does the fact that the man calls himself a "mill" or "manufacturer," or uses the word "milling" in his name, does that have anything to do with your buying?

A. No, sir; the quality and the price is the only thing that has anything to do with our buying.

Q. 17. And the satisfaction to your trade?

A. Yes, sir.

Q. 18. And makes no difference to you whether it is put up by a grinder or a so-called blender?

A. Yes, it makes no difference.

Q. 19. Do you know when you are buying this Tip-Top flour that the Cherokee Mills were not grinders of wheat?

A. Yes, we knew that they were mixers, or rather they were not grinders of wheat.

Q. 20. You knew they were not grinders?

A. Yes, sir.

Q. 21. You say their flour is satisfactory to your trade?

A. Yes, sir; entirely satisfactory.

Q. 22. How does your trade ask for flour, Mr. Hall?

A. Well, they ask for it by name.

Q. 23. By the brand name?

A. Yes, sir.

Q. 24. Do the salesmen of the wheat grinding mills ever make your territory and come to see you?

A. Oh, yes, they come around from different mills, all over the country.

Q. 25. Do they ever say anything to you about the Cherokee being a blender and not a grinder of wheat?

A. No, I never had one to mention it. We handle a certain line and when they come in and try to sell us, we tell them, usually, we are fixed up and do not go into detail.

Q. 26. You do not get that far?

A. They do not go into detail with us. We tell them we are satisfied with the line we have and they close the book and go on out.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. Do you personally buy the flour, Mr. Hall?

A. Yes, sir.

John T. Hall, Jr.

X. 2. Do you personally come in contact with the trade? Do you personally sell?

A. Yes, sir.

X. 3. Which do you sell, the wholesale end or the retail?

A. We operate the entire business under one head, we have a big house, about fifty by two hundred.

X. 4. Do which?

A. We have a good sized store and operate all in one place.

X. 5. Where do you sell your goods at wholesale, through what territory?

A. We sell to the small merchants all up and down the different highways who come in to buy the stuff.

X. 6. You do not go out and call on them?

A. We have two or three candy wagons, which go out and peddle candy, and they send the trade into the store.

X. 7. They solicit at the same time for the other things?

A. No, they just tell them to go to J. T. Hall & Son, to buy their flour and so on.

X. 8. You come in contact with the men buying the flour you sell at wholesale?

A. Yes, sir.

X. 9. And personally buy the flour?

A. Yes, sir.

X. 10. I am not asking what they do, but do you personally come in contact with the retail and the wholesale trade?

A. Yes, sir.

X. 11. Do you sell the consumer, also?

A. Yes, sir; we sell the consumer.

X. 12. Do you personally wait on the consumer trade?

A. Yes, sir.

X. 13. How long have you been in business in Birmingham?

A. Well, right after the war, about a year after the war, about 1919 or 1920.

X. 14. About 1919 or '20. When did you learn that the Cherokee Mills did not grind the wheat into the flour that they sold?

A. About six years ago when we quit buying from another fellow, we got to looking for a new brand of flour and investigated around and found the Cherokee Mills was a good brand of flour and taken it. We asked

at that time what kind of flour he was making and he said he was making a blended brand of flour.

X. 15. Who was the man?

A. I think Mr. Newell was making the territory at that particular time. That particular flour had been selling around us for quite a while. We found it was popular and wanted the brand of flour.

X. 16. He told you himself, it was a blended flour?

A. As well as I remember, he told me himself, personally.

X. 17. Was that the first order you had given him, or had you bought any before?

A. He had solicited our business a long time before we taken on the flour.

X. 18. He had solicited you?

A. Yes, sir; he was after us for a long time.

X. 19. During the time he was soliciting you to take the flour, what kind of concern did he tell you it was?

A. All I knew it was just a flour mill. He never did explain or go into detail.

X. 20. As a flour mill, you mean a mill that ground the wheat into flour?

A. I should say this, I never had taken an interest in it until we quit another brand, and wanted to stock it up, and then I asked about it.

X. 21. When you were hearing about the flour of the Cherokee Mills around, naturally you and the salesmen talked about it, and when you finally decided to buy you understood the Cherokee Mills was a concern grinding wheat into flour, didn't you?

A. I didn't know what kind of concern it was.

X. 22. What kind did you understand from the name?

A. I did not know, it might have been a mixer.

X. 23. Did you know at that time there were other concerns mixing flour and calling themselves "mills" or "milling company"?

A. Yes, sir.

X. 24. How long had you understood that?

A. Nearly fifteen years, I guess.

X. 25. How did you happen to understand that?

A. Different people telling me.

X. 26. From different people telling you?

A. Yes, sir. Coming in contact with the business.

X. 27. What does the word "mill" when used in the name of a concern selling flour, or the word "milling" when used in the name of a concern selling flour, mean, as to the character of the concern putting the flour out?

A. Well, the only way I can understand that, it is taking one class of products and turning it into another.

X. 28. That would be taking wheat, as one product, and turning it into flour?

A. Yes, sir; or taking flour and turning it into another grade of flour.

X. 29. How would you take one grade of flour and turn it into another grade of flour? Can you do that?

A. I don't know that you can do that. You can take a higher grade and a lower grade and make a different grade of flour.

X. 30. In other words, you think just mixing two flours together of different grades, is milling?

A. I take—

X. 31. Just answer my question, is that right?

A. Yes, I understand that is milling in a way; still at the same time it is a blending.

X. 32. The concern that takes two grades of flour, stirs them up together is a mill, according to your understanding, is that correct?

A. Yes, sir.

X. 33. How long have you had that idea?

A. I have had it a good while. But this flour, when it was sold to us, I understood was a blending concern, or mixing.

X. 24. They did tell you that. But, prior to that time, did not you, from the name of the concern, the Cherokee Mills, think it was a concern grinding wheat into flour?

A. I was working for the Standard Oil Company prior to that time and it did not come in my line of business.

X. 25. I am not asking you what you were working for. You heard the name, when you heard the name of a concern, it certainly indicated something to you before this man explained to you that it was a blending plant, you thought it was a concern grinding wheat into flour?

A. It did not worry me. I was not in the flour business at that particular time.

X. 26. Just answer my question. It indicated something to you, didn't it?

A. Well, it indicated taking one article and changing it to another article, is all it indicated to me, particularly.

X. 27. In other words a concern selling flour and calling itself a "mills," you were one of those men that has always understood it meant simply a mixing of flour, as well as grinding of flour?

A. Yes, sir.

X. 27. One of those exceptional minds.

A. That is what I understood it to be at that time.

X. 28. Now, you say you always had that understanding, born intuitively, with that knowledge.

A. At the time we bought the flour they told us it was blended.

X. 29. I agree with you on that. You have told us that several times, but what I want to know, is your understanding before you bought the flour.

A. They told us when we bought the flour that it was a blended flour.

X. 30. Yes, but you heard of it in the neighborhood, that it was giving satisfaction, you said?

A. I understood the word "mills" meant manufacturer.

X. 31. What, to your mind, is manufacturing flour, Mr. Hall?

A. Taking one article and changing it into another.

X. 32. Do you think a cook in the kitchen that takes the flour and adds baking powder, and salt and stirs it, you have seen them use these sifters, sifting it through that, do you think she is manufacturing flour?

A. Yes, sir.

X. 33. What other flours, Mr. Hall, do you handle other than the Tip Top brand?

A. The C. Becker Milling Company.

X. 34. Where is that located?

A. Redwood, Illinois.

X. 35. Does that concern grind wheat into flour?

A. They say they do.

X. 36. Do you handle any other flours?

A. We handle other flours.

X. 37. What are they?

A. Infallible and Roller Champion.

X. 38. Who makes the Infallible?

A. Sowers Milling Company.

X. 39. Do you know whether that concern is a grinder, or is simply a blender?

A. I have been told it was grinding, sir.

X. 40. What was the other grade?

A. Roller Champion flour.

X. 41. Who makes that?

A. I have forgotten the name, but they are a Roller mills, I think at Grand Rapids, Michigan.

X. 42. Is that the flour of a concern that actually grinds wheat into flour?

A. I understand that they are regular millers.

X. 43. Regular millers, and regular millers, you mean one that grinds the wheat into flour?

A. Yes, sir.

X. 44. What grade of flour is this flour you handle from C. Becker Milling Company.

A. There is three different grades.

X. 45. You handle three different grades from the C. Becker Milling Company?

A. Yes, supposed to.

X. 46. Do you handle all three grades?

A. Yes, we handle a mixed car.

X. 47. Is their highest grade of flour a better grade of flour than Tip Top?

A. No, sir.

X. 48. Is Tip Top as good as any of the grades you handle?

A. Not as good as Roller Champion and Infallible.

Mr. Bane: That is all.

Redirect Examination by Mr. Malone.

RD. 1. Do you pay more for Infallible and Roller Champion than for Tip-Top?

A. Yes, sir.

RD. 2. That is the reason you call them better grades of flour, is it?

A. I don't know it is absolutely better, but the price is the highest.

RD. 3. A better trade uses it?

A. People that have more money, is all I know, uses it.

Mr. Malone: That is all.

Witness Excused.

WILLIAM GUPTON, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. This is Mr. Gupton, is it?

A. Yes, sir.

Q. 2. Where do you reside, Mr. Gupton?

A. My residence?

Q. 3. Yes, Nashville?

A. 725 Benton Avenue.

Q. 4. In Nashville?

A. Yes, sir.

Q. 5. How long have you lived in Nashville?

A. Fifty-five years.

Q. 6. I was not going to ask too specifically how old you were. Mr. Gupton, were you formerly Mayor of Nashville?

A. Yes, sir.

Q. 7. What is your business?

A. Feed, grain, flour and meal.

Q. 8. How long have you been in business in Nashville?

A. I have been in the feed business forty years, been in it for myself, thirty-four.

Q. 9. How long have you been in the flour business-

A. About ten years.

Q. 10. Do you handle plain and self-rising flour, both?

A. Yes, sir.

Q. 11. Have you handled or bought in your flour business, any flour from the Nashville producers?

A. The first few years I started handling flour I handled the Liberty Mill flour. They went out of business and I went to Mr. McGraw, the Royal Milling Company.

Q. 12. Since then you have handled the flour from the Royal Milling Company?

A. Yes, sir.

Q. 13. Has that flour been satisfactory?

A. Absolutely.

Q. 14. Satisfactory to your trade?

A. Yes, sir.

Q. 15. Were the Liberty Mills grinders?

A. Yes, sir.

Q. 16. Is Mr. McGraw a grinder?

A. He is not.

Q. 17. You knew he was a blender all the time?

A. Yes, sir.

Q. 18. Now, in buying flour, does it make any difference to you whether the man calls himself a miller, a blender, or whether he calls himself a manufacturer, or what he calls himself?

A. Not at all.

Q. 19. What influenced you in buying?

A. Quality and price and demand for the grade of flour.

Q. 20. That is, satisfaction to your trade?

A. Yes, sir.

Q. 21. How do customers ask for the flour?

A. Well, they will either ask for the brand that I handle if I handle a certain brand, or ask if I handle a good flour and I tell them I do, of course. You never hear a fish man holler "Rotten fish."

Q. 22. So, they ask for flour by the brand just like they ask for coffee, canned goods, anything else?

A. Yes, sir.

Mr. Malone: All right. Cross-examine.

Cross-examination by Mr. Bane.

X. 1. I judge you are in the retail business?

A. Yes, sir.

X. 2. When did you learn, Mr. Gupton, that the Royal Milling Company did not grind wheat into the flour it sold?

A. I knew it all the time, ever since they have been in business. They started in business—I don't know whether it was the Royal Milling Company or not, when Dick Lindsay started out across the street from me, when they first went into business.

X. 3. They started out across the street from you?

A. Yes, sir.

X. 4. Dick Lindsay is the man who had it before Mr. McGraw did, in other words, sold out to Mr. McGraw, is that right?

A. Yes, sir.

X. 5. You have kept closely in touch with and been more or less prominent with affairs in Nashville?

A. Well, to some extent.

X. 6. And how long ago were you mayor of the City?

A. 1924.

X. 7. What is the term of Mayor?

A. Four years.

X. 8. Had you been in office in Nashville, prior to that time?

A. No, sir.

X. 9. The first and only city office you held was that of mayor?

A. Yes, sir.

X. 10. Are there not other things, Mr. Gupton, besides price and quality that influence you in buying from a concern? Don't you consider the character of the concern, as to whether or not it is likely to be permanent, continue in business, so that you will not build up a demand among your trade for a product and that product will probably be off the market in a little while?

A. I consider the dependability of the product he handles.

X. 11. In determining the dependability of the product, of course that determines the dependability of the concern, the character of the concern?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: I think you are competent to enlighten me on a question that I want to put to some witness for some time since I have been here. I want to get some idea as to how long the milling industry has been in your city here?

A. Which, the blending?

Examiner Sheppard: The blending and mixing, so-called mixing of flour?

A. The first blending concern I knew of was on Second Avenue, just north of Church, Zevelos was with it, the Owsley Flour Company. That must have been thirty years ago, I guess.

Examiner Sheppard: So, generally speaking for the past thirty years, these mixers and blenders have been well known in industry in your city?

A. Yes, sir.

Examiner Sheppard: Now, Mr. Gupton, in the sale of flour to your customers, do any of them ever come in and ask for the flour under the manufacturer's or the maker's name?

A. No, sir.

Examiner Sheppard: They seldom ask for flour by the name of the various brand names?

A. Yes, sir.

Examiner Sheppard: I think that will be all, sir.

Witness Excused.

(An adjournment was thereupon taken in the further hearing of the case until 10:00 o'clock A. M., January 14th, 1930, to be resumed at the same place.)

A. I. Schafer

Docket No. 1601.

Nashville, Tennessee, January 14, 1930.

Met, pursuant to adjournment at 10:00 o'clock A. M. Before:

William W. Sheppard, Examiner.

Appearances:

Baldwin B. Bane, For the Commission.

Thomas H. Malone, Jr., For the Respondents.

A. I. SCHAFER, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you reside, Mr. Schafer?

A. I live at Little Rock, South Carolina.

Q. 2. Not Little Rock, Arkansas, but Little Rock, South Carolina?

A. Yes, sir.

Q. 3. What is your occupation?

A. I am in the retail business, wholesale—retail and wholesale business, is the best description I can think of.

Q. 4. You are a retail and wholesale merchant at that place?

A. Yes, sir.

Q. 5. You combine both businesses in one store, is that it?

A. We have a general store, all together.

Q. 6. What is the name of your firm or concern?

A. Farmers' Supply Company.

Q. 7. Do you handle flour as a part of your business?

A. Yes, sir.

Q. 8. Plain or self-rising or both?

A. Both.

Q. 9. Which do you have the most call for?

A. Well we sell about 100 barrels of self-rising to two of plain.

Q. 10. So, that is a self-rising territory down in there?

A. Yes, sir.

Q. 11. Who do you buy flour from, Mr. Schafer?

A. Why, we buy from several different people.

Q. 12. Well, tell us about it?

A. We buy flour from the Watauga Milling Com-

pany of Nashville; buy some from the Allen Milling Company of Wadesboro, North Carolina; buy some from the Mountain City Milling Company of Chattanooga; we buy from the White Star Milling Company of Stauton, Virginia; we buy from the Carolina Milling Company at Dillon, and several others I could enumerate.

Q. 13. Now, you spoke of handling flour from the Watauga Milling Company of Nashville; what flour of theirs do you handle?

A. We handle the Southern Rose, Lady Luxory, also we buy some Ever Ready from them.

Q. 14. Do those flours give satisfaction?

A. They have.

Q. 15. They are satisfactory to your trade?

A. Yes, very satisfactory.

Q. 16. Mr. Schafer, in buying flour are you influenced by what the producer calls himself, whether he calls himself a miller or a blender, or a manufacturer; does that make any difference to you in buying flour?

A. It does not. I would like to explain why. When I buy a shipment of flour, we always take and bake a sample out of it. If it bakes good, if it is a new flour, we buy, and if that flour comes up good, we continue to buy it, that is as long as it pleases our trade and we have no kick on it.

Q. 17. Well, then, you buy according to the quality of the flour, whether it stands up or not, according to sample?

A. Yes, sir.

Q. 18. And the price?

A. Yes, sir.

Q. 19. And the man's name has nothing to do with it?

A. None at all.

Q. 20. Whether he calls himself a blender, whether he is a blender or a grinder, that does not cut any figure with you in buying flour?

A. We are not interested in that as long as the flour stands up and gives the trade satisfaction.

Q. 21. In buying from the Watauga Milling Company, did you know they were blenders, so-called, at the time?

A. Yes, sir.

Q. 22. You have known that all the time you were dealing with them?

A. Yes, sir.

Mr. Malone: That is all.

A. I. Schafer

Cross-examination by Mr. Bane.

X. 1. How big is Little Rock, South Carolina, Mr. Schafer?

A. Why, we are situated right in the heart of the best farming country in South Carolina. The town has a population of about 500.

X. 2. The town has a population of about 500?

A. Yes, sir.

X. 3. Where do you sell?

A. Where do we sell?

X. 4. Yes?

A. We do a general farm supply business. We furnish farms for several miles around our town.

X. 5. Sell what?

A. We supply the farms.

X. 6. Oh, you sell around the town, also?

A. In the town and around the town.

X. 7. What about the wholesale business, where do you do the wholesale business?

A. Right in the same place with the retail.

X. 8. You run them together?

A. In the same store.

X. 9. Where do you sell in the wholesale business? Do you sell the retail in the same place you sell the wholesale?

A. The same thing. We sell the trade that runs small stores and work the farmers, running the big farms supplying them with groceries they need to run their commissaries.

Mr. Malone: I omitted to ask you a question. How do your customers call for flour at your store?

A. Ninety-five per cent of our customers call for a sack of flour, Southern Rose, whatever they want they call for.

Mr. Malone: By the brand?

A. Yes, sir.

Mr. Malone: Just like they call for soap, or coffee, or canned goods?

A. Yes, sir, ninety-five per cent come in and ask for a bag of self-rising, Southern Rose, or other brands.

Mr. Malone: That is all.

X. 10. Then, your wholesale and retail businesses are both conducted and confined to the town of Little Rock and the immediate vicinity?

A. Yes, sir.

X. 11. You do not go out of the county in which Little Rock is located?

A. No, sir.

X. 12. How long have you been in the merchandising business?

A. Forty-one years, principally, I was born in it.

X. 13. You, yourself have been in the business forty-one years?

A. Yes, sir. I was born in it. Ever since I was this big (indicating) was behind the counter.

X. 14. How long have you been buying flour?

A. Since I was twenty-one.

X. 15. How old are you now?

A. Forty-one.

X. 16. Do you sell the flour as well as buy it? In other words, do you come in contact with the customers that buy from you?

A. Yes, sir.

X. 17. What kind of a concern is the Allen Milling Company?

A. They are grinders, I guess you would call them.

X. 18. Grind the wheat into flour?

A. Yes, sir.

X. 19. Actual millers?

A. Yes, sir.

X. 20. What kind of concern is the Mountain City Milling Company?

A. I could not tell you.

X. 21. Do you know whether that is a so-called blending or grinding concern?

A. I could not tell you. We buy so little from them I could not tell you.

X. 22. What kind of concern is the Star Milling Company?

A. I don't know. I think they are actual millers.

X. 23. What about the Carolina Milling Company?

A. I think they buy the flour already ground and have it shipped to them.

X. 24. You think they are blenders?

A. I think they grind wheat, also buy flour already ground.

X. 25. You think they are both?

A. Yes, sir.

X. 26. You think they are both actual millers and blenders?

A. Yes, sir.

X. 27. Do you buy from any other blenders in Nashville, than the Watauga Milling Company?

A. I don't think so, no, sir.

X. 28. How long have you been buying from the Watauga Milling Company?

A. Four years.

X. 29. Four years?

A. Yes. In the four years time I guess I have bought between three and five thousand barrels of flour from them.

X. 30. Is that a large purchase or a small purchase in the period of four years, somewhere around a thousand barrels per year?

A. It represents approximately ninety-two or three per cent of our flour business.

X. 31. You have been buying largely from them?

A. Yes, sir.

X. 32. When did you learn that the Watauga Milling Company was not an actual miller of flour?

A. We used to buy flour here from a concern at Nashville, and the man used to come around to see us.

X. 33. What was the name of that concern?

A. That is what I was trying to think of right now, and at that time we had a shipment which came in and he said, "these people do not manufacture any flour. They only buy the crude stuff, bleach it, prepare it." He said "they are not grinding at all."

X. 34. How long had you been buying from the Watauga Milling Company when you first learned that?

A. That was the first shipment, I believe.

X. 35. Somewhere around the first shipment?

A. Yes, and for curiosity sake, I sat down and wrote the Chamber of Commerce here, and asked them, and they replied that there was not but two actual grinders.

X. 36. When you found that out you wrote the Chamber of Commerce to find if it was true?

A. Yes, sir.

X. 37. They wrote back that it was true?

A. Yes, sir; they wrote back that they were mixers of flour.

X. 38. Prior to that time you thought it was an actual milling concern?

A. I didn't know.

X. 39. What did you think about it?

A. I never thought.

X. 40. You evidently thought something when you wrote the letter?

A. Yes.

X. 41. Apparently you thought it was a milling concern, didn't you?

A. I never gave it any thought.

X. 42. You were bound to have had some thought if you did not have some thought, then why did you write the letter?

A. I wrote the letter to satisfy my own curiosity.

X. 42. Yes, because you thought of it?

A. I don't know, I wanted to find out.

X. 44. When that concern called itself the Watauga Milling Company and you bought its flour, didn't you think that concern was an actual milling concern grinding wheat into flour?

A. I still think they are grinding flour.

X. 45. I did not ask that. Answer my question.

A. All right.

X. 46. When you bought flour from the Watauga Milling Company the first time you heard of it, did not you think it was a concern actually grinding wheat into flour?

A. I don't know.

X. 47. I did not know does not answer my question. I did not ask what you knew, I asked what you thought about it. It evidently made some difference to you, Mr. Schafer, or you would not have written the letter?

A. I don't know—I didn't know whether it was a grinding or a mixing concern.

X. 48. You evidently thought it was a grinder?

A. I did not give it any thought.

X. 49. So you set down and wrote a letter without giving it any thought, to a man telling you that, you took the trouble to sit down and write that letter, is that what you want the Commission to understand?

A. I wanted to satisfy the traveling man, or who was a good friend of mine.

X. 50. He knew?

A. He said he heard it was.

X. 51. Yes, he knew?

A. He said he thought it was. I sat down and wrote the letter.

X. 52. In other words, you did it because he asked you to do so?

A. He said he thought it was a mixer and I sat down and wrote the letter, in other words, in order to satisfy my own curiosity.

X. 53. Just answer my questions. You would have us believe that a traveling salesman representing a concern in Nashville, did not know what nature the other concerns were in Nashville, that were competing with his concern, is that what you would have us believe?

A. I don't know and I don't care.

X. 54. I don't care what you care about. Listen to my question. You said the salesman asked you to write the letter and you wrote it because the salesman did not know, a salesman representing a Nashville concern?

A. Yes, sir.

X. 55. Would you have us believe a salesman representing a grinding mill in Nashville did not know what the nature of the other concerns were selling flour in Nashville? Is that what you want us to believe? I ask you that?

A. I do not care what you believe.

X. 56. I am asking if that is what you want us to believe?

A. I will say more than ninety-five per cent of the men on the road selling flour do not know what they represent.

X. 57. I am asking you if you would have us believe that this salesman representing a grinding mill in Nashville, did not know what character the other concerns were in Nashville, and asked you to write and find out?

A. I wrote it at this gentleman's request.

X. 58. At his request?

A. Yes.

X. 59. You did not write on your own request?

A. I did not matter to me who they were.

X. 60. What does the term "mill" or "milling" when you put in the name of the concern selling flour mean or indicate to you?

A. Well, as I understand the meaning of the word "mills" it means a manufacturer, doesn't it?

X. 61. I am asking you, don't ask me. I am asking what it means to you?

A. I am telling you what it means, to manufacture, a hand process of making things.

X. 62. Is that what it means to you?

A. That is the Latin definition.

X. 63. All right, suppose the concern is selling flour?

A. Yes.

X. 64. It comes to you and calls itself the Eureka Mills, what kind of concern would the name indicate to you it was?

A. Why, mister, if I had analyzed the products that we were handling—

X. 65. Just answer my question. What would that indicate to you as to the character of the concern, if I come to you and told you that I am representing the Eureka Mills and want to sell you some flour, what kind of concern would you think the Eureka Mills was?

A. I would either think they were blenders, mixers or grinders.

X. 66. You would think they were either blenders, mixers or grinders?

A. Yes.

X. 67. How long has it been since you would have thought that?

A. Twenty years ago.

X. 68. Twenty years ago?

A. Not that long, self-rising flour has not been out but—we have not been handling it I guess but fifteen years.

X. 69. About fifteen years ago?

A. I suppose so, just offhand speaking, about fifteen years ago.

X. 70. About fifteen years ago. Do you think there is any milling process involved in the manufacturing of self-rising flour?

A. Yes.

X. 71. What is the milling process?

A. The milling process, the mills receive the flour and if it comes in the crude state there is the bleaching process and adding phosphates, soda and salt and other ingredients?

X. 72. You think the mixing of those ingredients is a milling process, is that your idea?

A. Yes, I think so.

X. 73. Now, you thought prior to the time you wrote the Chamber of Commerce here in Nashville about the Watauga Milling Company, that concern using the word "Mills" or "Milling" in its name was either a mixer, blender or a concern grinding wheat into flour?

A. Yes, sir.

X. 74. How long have you been buying self-rising flour?

A. About fifteen years.

X. 75. Where did you buy it before?

A. The first flour we ever bought that I remember, right at the present time, was when one called the "Merry Widow" was out. I remember distinctly it had a woman's face with a big hat on.

X. 76. Where did you buy it?

A. From Nashville somewhere. Put up by the Liberty Mills.

X. 77. The Liberty Mills, fifteen years ago?

Mr. Malone: The Ford Flour Company.

A. Yes, maybe it was the Ford. I know it was from Nashville.

X. 78. Made in Nashville?

A. Yes, I think so.

X. 79. That concern called itself the Ford Flour Company, did it not?

A. I really don't know.

X. 80. When was the first time you heard of a concern which made self-rising flour, calling itself a Milling Company or a Mill?

A. Fifteen years ago when this flour we bought named the "Merry Widow."

X. 81. The concern selling that flour did not call itself a Mill or Milling Company, did it?

A. I really don't know what it called itself.

X. 82. All right, answer the question. When was the first time you heard of a concern selling self-rising flour calling itself a Mill or Milling Company?

A. I would have to go back to my records to see.

X. 83. Well, approximately, to the best of your recollection, the first time you heard of it was approximately four or five years ago?

A. Oh, no, certainly not.

X. 84. Before that, did you?

A. Why a long time before then.

X. 85. You heard of a self-rising manufacturer?

A. Why, certainly.

X. 86. A self rising manufacturer calling himself a Mill or Milling Company?

A. Yes.

X. 87. What kind of flour is Southern Rose flour, a patent flour, a clear flour or a straight flour?

A. I imagine straight, called a straight grain flour.

X. 88. What does it have on the sack?

A. The highest patent flour.

A. I. Schafer

X. 89. You think it has the highest patent flour on the sack?

A. The highest patent, the highest grade flour, something, I know it gives our customers perfect satisfaction.

X. 90. You do not know whether it is a patent flour or a clear flour?

A. I do not.

X. 91. What is "Lady Luxury," do you know?

A. It is a cheaper brand of flour, it has no brand on the sack, I don't believe.

X. 92. You do not know whether it is a clear flour, a patent flour or a straight flour?

A. I don't believe so.

X. 93. What about the "Ever-ready"?

A. Ever-ready is the same, only a different brand.

X. 94. The same flour as "Lady Luxury," only a different brand?

A. Yes.

X. 95. What kind of flour do you buy from the Allen Milling Company?

A. They make several different grades, "Blue Bell," "Polly's Best."

X. 96. What grade is "Blue Bell"?

A. The same class as "Lady Luxury."

X. 97. A patent flour?

A. I don't know.

X. 98. What is the other?

A. "Polly's Best," about the same grade as "Southern Rose."

X. 99. That is a patent flour, you understand?

A. Yes, but it is not labeled on the sack.

X. 100. Don't they indicate on the sack whether it is an extra patent, a long patent, a short patent?

A. No, just self rising flour.

X. 101. What kind of flour do you buy from the Mountain City Milling Company?

A. I don't know the name of it, but we buy another flour known as a good biscuit flour that they make, the "Four Square" flour, a good biscuit flour. Our stenographer keeps these names and I always tell her to order by the names.

X. 102. What percentage of your trade is darky trade?

A. About sixty per cent.

X. 103. About sixty per cent?

A. Yes.

A. I. Schafer M. B. Bannon

X. 104. Don't you think it is a great deal more than that, seventy-five per cent?

A. I doubt if it would run that much, not over that any way.

X. 105. What is the difference between a blender and a mixer, Mr. Schafer?

A. A blender and a mixer, I think are the same.

X. 106. A blender and a mixer are the same, the way you understand?

A. I would think so.

X. 107. You think a blender and a mixer would be the same. What is a blender?

A. As I understand a blender buys up two different grades of flour and puts them together and makes a blend.

X. 108. What is a mixer?

A. A mixer sometimes buys straight flour and puts in the different ingredients to make self rising flour.

X. 109. In other words a man who prepares self rising flour is a mixer and a man who prepares a blended flour, mixes together two or more grades, is a blender, is that the way you understand?

A. I suppose so.

Mr. Bane: That is all, Mr. Examiner.

Witness Excused.

M. B. BANNON, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Bannon, where do you reside?

A. McEwen, Tennessee, in Humphrey County.

Q. 2. What is your business, Mr. Bannon?

A. Well, for the last seven years I have been in the grocery business.

Q. 3. A retail grocer?

A. Retail grocer business.

Q. 4. You handle flour?

A. Yes.

Q. 5. Plain, or self rising, or both?

A. I handle very little self rising, some, but very little.

Q. 6. Mostly plain.

A. Plain, mostly plain.

M. B. Bannon

Q. 7. Where have you been buying your flour?

A. I have bought some from the Watauga Milling Company, the Colonial Milling Company and the Nashville Milling Company, and possibly others, that I do not remember just exactly.

Q. 8. How much flour had you bought from Mr. McCarthy, that is, the Watauga Milling Company, and how has it been as to satisfaction, has that given satisfaction to you?

A. It has given us satisfaction, yes.

Q. 9. And to your trade?

A. To the trade, yes, that is the reason I handle it, because the trade wanted it.

Q. 10. Did you know in buying that flour that the Watauga Milling Company was a blender and not a grinder of wheat?

A. Yes.

Q. 11. In buying flour do you pay any attention to the man's name, whether it has got the word "Mills" in it, or the word "Manufacturer," does that influence you in buying flour?

A. No, sir.

Q. 12. What does influence you in buying flour?

A. Well, the price, the demand, the satisfaction it gives the consumer.

Q. 13. And if the price is right and the flour gives satisfaction to the consumers, it makes no difference to you whether it is made by a blender, a grinder or who makes it?

A. No, sir.

Q. 14. It makes no difference what he calls himself?

A. No, sir.

Q. 15. Nor what name he calls himself?

A. No, sir.

Q. 16. How do your customers ask for flour?

A. They usually ask for it by name.

Q. 17. Ask by the brand?

A. Yes.

Q. 18. Just like they ask for Octagon Soap, Arbuckle Coffee, and things like that?

A. Yes.

Mr. Malone: I think that is all.

Cross-examination by Mr. Bane.

X. 1. How long have you been in the grocery business, you say for seven years?

A. Yes.

X. 2. All of the time at McEwen?

A. Yes.

X. 3. What size town is McEwen?

A. It has about six hundred inhabitants.

X. 4. Are you the largest store in McEwen, the largest grocery store?

A. Well, I guess I sell more goods than any the rest of them. You see, I mean I sold more goods than any of the rest of them at that time. You see I closed out August 5th, 1929.

X. 5. Oh, you are no longer in business?

A. No, sir; I am not in business now.

X. 6. You sold out in August, 1929?

A. Yes, 1929.

X. 7. What percentage of your trade up there was darky trade?

A. Not over two per cent.

X. 8. Mostly white people?

A. The most of it was white people.

X. 9. Now you buy from the Nashville Milling Company and the Colonial Milling Company in addition to the Watauga Milling Company?

A. Yes, sir.

X. 10. What kind of concern is the Nashville Milling Company?

A. I understood it was blenders, manufacturers, just like the Watauga.

X. 11. What kind of concern is the Colonial Milling Company?

A. They grind.

X. 12. Actual millers?

A. I think so, yes.

X. 13. Which of those three concerns do you buy most of your flour from?

A. Well, I have bought the most from the Colonial.

X. 14. You have bought the most from the Colonial?

A. Yes.

X. 15. When did you learn that the Watauga Milling Company was not an actual milling concern?

A. I could not say exactly when I heard they did not grind, I don't remember.

X. 16. How long had you been buying from them before you heard it?

A. I knew it was when I bought.

X. 17. You knew it was a blender when you first bought it?

A. I had been handling "Polly Rich" and the prices were so high I could not meet competition and they told me they had a blended flour as good as any.

X. 18. Who told you that?

A. Mr. Barnes who traveled for the Colonial, they used to put out the "Gold Hunter" which was a blend and gave very good satisfaction. Then I got the "Diamond Crystal" and I understood what he claimed, he said it was actually the same flour, that the Watauga Milling Company bought the flour from them and made it up.

X. 19. Prior to the time that you bought in that way, and learned that the Watauga Milling Company blended flour, and were not doing their actual grinding, what kind of concern when you first heard of it, did you think it was, that called itself the Watauga Milling Company? What did you think it was?

A. I think a young man called on me to sell me the first time I heard of it, my recollection is. I would not say for sure, but my recollection is, that he told me it was blended.

X. 20. If he had not told you that you would have thought it was an actual Milling Concern, would you not, as long as it called itself a Milling Company?

A. I never thought about that.

X. 21. That is what you would have thought, isn't it?

A. I was in the Milling business in 1890 when they began blending flour, at that time.

X. 22. I am not asking about blending, that may be, but I say if he had not told you that, since it called itself the Watauga Milling Company, you would have thought it was a Milling Company?

A. The salesman for the Milling Companies, for the grinders would not let us think that. They made that talking point against "Tip-Top" for years.

X. 23. I understand they might have told you, but I am asking if this man had not called on you and told you, and these others had not called on you and told you, since it called itself the Watauga Milling Company, it certainly would indicate it was a mill to you?

A. No, sir.

X. 24. If I come into your place and represent the Eureka Mills or the Sunnyside Milling Company, trying to sell you flour, would not you think it was a mill grinding flour?

A. Not until I investigated, there are so many blenders.

X. 25. Do you know how many grinders sell in the Southeastern territory?

A. I do not know of any unless it is the Colonial.

X. 26. Don't you know there are a considerable number, considerably over one hundred actual grinding mills, that is grinding wheat into flour, selling in the southeastern territory?

A. I don't know.

X. 27. That would be quite a large number, wouldn't it?

A. Yes.

X. 28. You say you were in the Milling Business. When were you in the Milling Business?

A. In 1890, '91, '92 and '93.

X. 29. Where?

A. Nashville.

X. 30. At what mill?

A. The Union Mills.

X. 31. What kind of concern was that?

A. They were grinders, a combination of the old Nashville Mill and the Lanier Mills.

X. 32. They actually ground the wheat into the flour?

A. Yes.

X. 33. What other concern were you with here in Nashville or was here?

A. At that time the Liberty Mills were built.

X. 34. What other concern, any others?

A. Owsley, started one of the blenders.

X. 35. Started blending at that time?

A. Yes, a fellow named Owsley came here from some place in Kentucky.

X. 36. What did he call his concern?

A. Called it "Self Rising."

X. 37. Did not he have a name for his concern?

A. I don't remember,—Owsley Milling Company.

X. 38. He just blended flour?

A. He bought flour from the Union Mills and added the self rising ingredients.

X. 39. What is the difference between the blender and a mixer, Mr. Bannon?

A. I could not tell exactly?

X. 40. There is some difference in your mind between a flour blender and a flour mixer, is that right?

A. Well, the words seem almost the same to me.

X. 41. There is no difference in your mind then?

A. No, sir.

Mr. Bane: That is all, Mr. Examiner.
Examiner Sheppard: Anything else?
Mr. Malone: Nothing else.

GEORGE T. MURSS, was thereupon introduced as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Murss, where do you live?
A. Ashland City, Tennessee.
Q. 2. What is your business?
A. I am in the Mercantile Business.
Q. 3. Connected with any bank in Ashland City?
A. Yes, sir.
Q. 4. What position do you hold?
A. Vice-President.
Q. 5. What is the Bank?
A. The Ashland City Bank & Trust Company.
Q. 6. Well, did you start in as Vice-President of that Bank?
A. No, sir.
Q. 7. How did you start there?
A. I started as janitor.
Q. 8. I see. What is your business, retail or wholesale?
A. Retail.
Q. 9. What is the name of the business?
A. Murss Brothers.
Q. 10. Do you handle flour?
A. Yes.
Q. 11. Plain or self rising, or both?
A. Both.
Q. 12. Which do you sell the more of?
A. Well, I don't think there is a great deal of difference.
Q. 13. About a fifty fifty proposition?
A. Yes, I would say, fifty-fifty.
Q. 14. Do you buy flour produced by any Nashville concern?
A. Yes.
Q. 15. What is that?
A. Royal Milling Company.
Q. 16. That is Mr. McGraw's plant?
A. Yes.
Q. 17. How long have you been using that flour?
A. Approximately ten years.

George T. Murss

Q. 18. Has it given satisfaction to your trade?

A. Absolutely, yes.

Q. 19. Did you know when you were buying and using that flour that Mr. McCraw was a blender or mixer, and not a grinder?

A. Yes.

Q. 20. Does it make any difference to you in buying flour whether the man calls himself a blender, a mixer, a manufacturer, a mill, a milling company, or what he calls himself?

A. No, sir; makes no difference whatsoever to me.

Q. 21. What things do matter to you in buying flour? What do you consider in buying flour?

A. I consider the price and the satisfaction that it gives to my trade.

Q. 22. And those are the only things you consider?

A. Yes.

Q. 23. Has your trade—how does your trade call for flour, Mr. Murss?

A. They call for it by name.

Q. 24. By brand?

A. By brand, yes.

Q. 25. Just like they do soap, coffee, anything else?

A. Yes.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. You say Mr. Murss that the only thing you consider when you are buying a product is the price at which you can buy that product, whether you have served it to your customers and they are satisfied with it, and will call for it again?

A. Yes.

X. 2. Do we understand by that you are willing to devote your time and efforts in building up a demand for a product in your trade without taking into consideration at all the character of the concern furnishing that product, as to whether or not that concern is likely to remain in business, or the stability of the concern, its likelihood to be a permanent concern and continue to furnish the goods? Is that what you want us to understand?

A. I don't understand the question, probably.

X. 3. You do consider when buying a product, flour included, you do consider the character of the concern furnishing the product?

A. Yes.

X. 4. Because you do not want to devote your time to building up a demand in your trade for a product that you may not be able to obtain in the future, do you?

A. No, sir.

X. 5. So you do consider that, don't you?

A. Yes, I consider that.

X. 6. How long have you been in the retail mercantile business in Ashland City?

A. Twenty-four years.

X. 7. What size is Ashland City?

A. It has about seven or eight hundred I would say.

X. 8. And your sales are confined to the City of Ashland?

A. And the vicinity.

X. 9. And the country trade that comes in?

A. The country trade that comes in.

X. 10. What percentage of your trade is darky trade?

A. I have very little darky trade, very little.

X. 11. Very little darky trade?

A. Very little.

X. 12. Most of it is white people?

A. Yes.

X. 13. Do you handle any flours, other than the flour made by the Royal Milling Company?

A. Yes.

X. 14. What others do you handle?

A. At the present I have a barrel or two from the Dixie Mills at Clarksville.

X. 15. All right, what else?

A. I have handled the Dunlop Flour at Clarksville, the Dunlop Milling Company.

X. 16. All right, Dunlop?

A. I have handled Liberty Mills flour here at Nashville.

X. 17. Those are the four whose product you have handled? The Dixie, Dunlop and Liberty in addition to the Royal?

A. Yes.

X. 18. Have you ever handled any flour from the Richland Milling Company?

A. No, sir; not by that name.

X. 19. Have you handled it under any name?

A. No.

X. 20. Have you handled any flour from the Empire Milling Company?

A. No.

X. 21. What character or kind of flour is it that you bought from the Dixie Mills, high grade?

A. Their best patent flour.

X. 22. Their best patent flour?

A. That is what they branded it.

X. 23. What kind was it you bought from the Dunlop?

A. I bought the high patent and that second best.

X. 24. And what kind was it you bought from the Liberty?

A. I bought about three or four different kinds.

X. 25. Including their best patent, that they put out?

A. Yes.

X. 26. Now what kind of flour did you buy from the Royal Milling Company?

A. I bought the "Martha White," the "Clover Leaf," "Delightful" and "Cellfast."

X. 27. Can you tell us what kind the "Martha White" is?

A. Yes, supposed to be the best.

X. 28. That is a patent?

A. Best patent.

X. 29. What is the "Clover Leaf"?

A. That is the second best patent.

X. 30. What is the "Cellfast"?

A. It is a cheaper grade.

X. 31. What is the other brand?

A. "Delightful" is another brand to "Polly Ann."

X. 32. What kind is "Delighful" is that a cheap grade?

A. It is branded best patent.

X. 33. It is branded best patent, goes with "Martha White"?

A. No, sir; "Martha White" is a higher patent I believe and "Clover Leaf" is superlative patent.

X. 34. What other brands do you have?

A. I handle "Polly Ann," that is self rising, and Extra Good, that is self rising.

X. 35. So, it is extra good self rising?

A. No, "Extra Good" is the name of the flour, a cheap self rising flour.

X. 36. Those are brands you buy from the Royal?

A. Yes.

X. 37. When did you learn that the Royal Milling Company did not grind wheat into the flour that is sold?

A. I just could not say.

X. 38. How long had you been dealing with them be-

fore you learned they did not grind the wheat into the flour that they sold?

A. I could not say.

X. 39. As much as five years?

A. No.

X. 40. As much as three years?

A. No, sir.

X. 41. As much as two years?

A. I could not answer that question.

X. 42. How did you learn that the Royal Milling Company did not grind wheat into the flour that it sold?

A. I just heard somebody say so.

X. 43. Somebody told you so?

A. Yes.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Anything else?

Redirect Examination by Mr. Malone.

RD. 1. You have been in Mr. McGraw's mill?

A. Yes, sir.

RD. 2. You have seen the process?

A. Yes.

RD. 3. You know they do not grind?

A. Yes.

Recross-examination by Mr. Bane.

RX. 1. When did you go into Mr. McGraw's mill?

A. Oh, several years ago, I could not say, some years ago.

Mr. Bane: That is all.

Witness Excused.

Examiner Sheppard: Mr. Malone, have you got much more testimony along this line?

Mr. Malone: Yes, sir. Do you think—

Examiner Sheppard: It is getting cumulative.

Mr. Malone: Getting cumulative?

Examiner Sheppard: Yes, sir. While I do not want to restrict you, I just want to call your attention to the fact that I believe that twenty witnesses on one question is sufficient.

Mr. Malone: Is sufficient, yes, sir.

Examiner Sheppard: It might save some time by not cumulating further.

Mr. Malone: Yes, sir. Now we have got, the

only reason I do not stop right now on that, Mr. Examiner, we have some witnesses subpoenaed that I am afraid are on their way here, so the expense has been incurred to bring them.

Examiner Sheppard: All right.

J. M. White, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you live, Mr. White?

A. St. Joseph, Tennessee.

Q. 2. What is your business?

A. General merchandise.

Q. 3. Wholesale or retail?

A. Retail.

Q. 4. In that business do you handle flour?

A. Yes.

Q. 5. Plain or self rising?

A. Both kinds, about ninety per cent plain and about ten per cent self rising.

Q. 6. Do you buy any flour produced by any Nashville concern?

A. Yes.

Q. 7. What concern is that?

A. Cherokee Mills?

Q. 8. What flour do you buy from them?

A. I buy "Tip Top," "Red Check" and "Blue Sky."

Q. 9. Are those flours giving satisfaction to your trade?

A. Yes.

Q. 10. How long have you been buying those flours?

A. A little over four years, four a nd a half years this last time, and then I handled them about three years before that in 1918, 1919 and 1920.

Q. 11. So you have handled them altogether something like seven years, those brands?

A. Yes, sir.

Q. 12. Did you know when you were handling those brands that Cherokee Mills were not a grinding mill but a so-called blender or mixer?

A. Yes, sir.

Q. 13. Does it make any difference to you in buying a flour whether the producer is a grinder of a mixer, so long as the price is right, and the quality right, and your trade satisfied?

A. Well, no, it does not. Of course if I buy from a mill that ground, that gave me as good a piece of goods, I expect I would buy from a mill that ground, but I never have been able to get a hold of one.

Q. 14. You have more satisfaction in dealing with the so-called blenders or mixers?

A. Yes, sir; I do.

Q. 15. So, the use of the word "mills" or "milling" or "Manufacturer" by a firm, cuts no figure with you in buying flour, is that right?

A. No, sir.

Q. 16. How do your customers buy flour?

A. They buy it by name, practically all of them.

Q. 17. Just like they call for soap, Arbuckle's Coffee, and anything else?

A. Yes.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. What kind of flour is "Tip Top" Mr. White?

A. It is a high grade piece of goods.

X. 2. Meaning by that, is it a patent, short patent, best patent, extra patent, or clear or what?

A. Well, they make "Tip Top" in the self rising and plain, but as to the patent, it is a forty-five per cent patent.

X. 3. It is about a forty-five per cent patent in both instances?

A. Yes.

X. 4. The flour is the same in both the self rising and the plain, is not it?

A. Yes.

X. 5. What grade of flour is the "Red Check"?

A. It is forty cents a barrel under "Tip Top." I should imagine you would call it second patent if you want to term it a patent.

X. 6. What does it have on the bag?

A. Really, I could not tell you.

X. 7. You do not know whether it is called a straight or a clear or what?

A. No, sir.

X. 8. What is the "Blue Sky"?

A. It is $1.80 under "Tip Top," the cheapest grade of flour they make.

X. 9. Do you know what that is called, a straight flour, or what?

A. I think it has patent on it.

X. 10. Well it is called a patent too?

A. I think that is right.

X. 11. A right cheap grade of flour?

A. Yes.

X. 12. A right low grade of flour?

A. Yes.

X. 13. It is put out in both plain and self-rising?

A. Yes, but it is called something else in the self rising, but it is the same.

X. 14. What size town is St. Joseph, Tennessee?

A. About six or seven hundred.

X. 15. How long have you been in business there?

A. This last time four and a half years.

X. 16. What kind of business were you in prior to that four and a half years?

A. I was in the same line of business at St. Joseph for three and a half years, then I was on the road for two years.

X. 17. On the road for what concern?

A. Selling flour.

X. 18. For what concern?

A. Cherokee Mills.

X. 19. You had been a salesman for the Cherokee Mills before you went in business this time?

A. Yes.

X. 20. How long had you been a salesman for the Cherokee Mills?

A. Two years.

X. 21. Only two years?

A. Yes.

X. 22. What percentage of your trade of St. Joseph is darky trade?

A. We have one nigger in the town, and surrounding country of about four or five miles, and he is a cook.

X. 23. He is a cook. That is an unusual situation?

A. But he uses Tip Top, too.

X. 24. He uses Tip Top?

A. Yes.

X. 25. I do not see how you southerners up there live without some darkies. Don't you handle other flours than the Cherokee Mills flour?

A. Not at present.

X. 26. Not at present?

A. No, sir.

X. 27. When did you first learn that the Cherokee Mills was not a concern grinding wheat into flour?

J. M. White John Skillern

A. When my competitor began handling "Tip Top" I began inquiring about it and one of the Liberty Mills salesmen told me that they did not grind.

X. 28. When was that?

A. That was about 1919, I suppose.

Mr. Bane: That is all, Mr. Examiner.

JOHN SKILLERN, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Skillern, where do you live?

A. Summer town, Tennessee, in Laurence County.

Q. 2. What is your business?

A. I am a retail groceryman.

Q. 3. Do you handle flour, plain and self-rising?

A. Yes. I do not handle any self rising, just plain flour.

Q. 4. Plain flour?

A. Yes.

Q. 5. Do you buy any flour produced by any Nashville concern?

A. Yes.

Q. 6. What is that?

A. I buy from the Royal Milling Company, and the Tennessee Milling Company.

Q. 7. You mean the Tennessee Mill and Grain Company?

A. Yes.

Q. 8. And the Royal?

A. Yes.

Q. 9. Have those flours been satisfactory to your trade?

A. Yes, they have.

Q. 10. Did you know when you were buying them that they were produced by the so-called blenders or mixers and not by grinding mills?

A. I knew that they were. I knew the Royal Milling Company was. I did not know the Tennessee Milling Company or the Tennessee Grain & Milling Company.

Q. 11. You did not know anything about them?

A. No, sir. I have not bought very much flour from the Tennessee Grain & Milling Company.

Q. 12. Does it make any difference to you whether you buy from a mixer or a so-called blender, or a grind-

ing mill, so long as the price is right, and the flour satisfactory to your customers?

A. No, sir.

Q. 13. Do you pay any attention to the man's name, whether the word "mill," "milling" or "manufacturer" is in it, when buying flour?

A. No, sir; I do not.

Q. 14. How do your customers call for flour?

A. They just come in and call for a certain brand of flour, a sack of flour.

Q. 15. By name?

A. "Martha White."

Q. 16. Or whatever the brands may be?

A. Yes, "Tennessee"—

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. When did you learn that the Royal Milling Company were not actual millers?

A. Well, I have known it ever since I commenced buying flour from them.

X. 2. How long has that been?

A. About six years ago.

X. 3. How did you learn it?

A. I was in Mr. McGraw's plant. I have known Mr. McGraw for some time.

X. 4. How long have you known Mr. McGraw?

A. I used to live in Nashville, and knew him when I lived there sixteen or seventeen years ago.

X. 5. Sixteen or seventeen years ago you knew of Mr. McGraw then?

A. Yes.

X. 6. You knew the kind of plant it was then?

A. No, sir; he did not have the plant then, but when I commenced buying flour from him I was in Nashville.

X. 7. You were in Nashville about the time you first began to buy?

A. Yes.

X. 8. You went to see Mr. McGraw and he took you through his plant?

A. Yes.

X. 9. That is the way you learned what it was?

A. Yes.

X. 10. What size town is Summertown, Tennessee?

A. Oh, it is a small place, seven or eight hundred.

X. 11. What percentage of your trade there is darky trade?

A. No darkies at all.

X. 12. What section of Tennessee is it that don't have darkies? Is that West Tennessee?

A. No, sir; that is middle Tennessee, about sixty-nine miles south of here, below Columbia.

X. 13. What is the matter with the darkies?

A. We have a district over there, they live in the fourteenth district, live in Lawrenceburg but not in Summertown.

X. 14. Are they segregated into a Congressional District?

A. No, sir; segregated, not segregated, but no darkies live in Summertown.

X. 15. You did not sell outside Summertown?

A. No, sir.

X. 16. How long have you been in the retail business?

A. Sixteen years.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Mr. Skillern, do customers ever come into your store and demand flour by the name of the Manufacturer?

A. No, sir.

Examiner Sheppard: Or a blender, as the occasion might be?

A. No, sir.

Examiner Sheppard: Are they interested as to who the manufacturer may be?

A. No, sir; they just call for it by the name of the brand.

Examiner Sheppard: By the brand name?

A. Yes, sir.

Examiner Sheppard: All right.

Witness Excused.

R. W. McWILLIAMS, was thereupon produced as a witness and having been duly sworn, testified as follows:

R. W. McWilliams

Direct Examination by Mr. Malone.

Q. 1. Where do you live, Mr. McWilliams?

A. Aberdeen, Mississippi.

Q. 2. What is your occupation?

A. Salesman.

Q. 3. Are you a salesman for Mr. Tupper's mill?

A. Yes.

Q. 4. How long have you been with him?

A. About six years, I think.

Q. 5. What territory do you cover?

A. I used to cover the entire part of North Mississippi, but I am covering now just local territory around Aberdeen, northeast Mississippi that I am covering now.

Q. 6. Did you call on the trade in that part of the country?

A. Yes, I call on the wholesale grocery trade and the retail grocery trade.

Q. 7. Selling both wholesale and retail?

A. Yes, selling the retail grocer with the jobber salesmen, sometimes, and sometimes by myself, but through the jobber.

Q. 8. What do you find, Mr. McWilliams as to the knowledge of the trade or people you call on about blending or mixing and especially with regard to the Nashville Mills, whether they are blenders or mixers, most of them?

A. It is rather mixed. The average salesman does not know what a blender or a mixer is, and the trade today though, are finding out, and they would rather buy from a blender because he can give them a better piece of goods, and more uniform.

Q. You mean they would rather buy from a blender than a grinder?

A. A good many, yes.

Q. 10. Why?

A. Because the goods will run more uniform.

Q. 11. That is, you have educated them to think that?

A. No, sir.

Q. 12. Do the salesmen of the wheat mills make that same territory that you make?

A. Yes.

Q. 13. Do they inform the trade that these Nashville Mills are not grinding?

A. Yes.

Q. 14. Do you find your trade well informed on that point?

A. Ninety-five percent of them inform the trade that

we are not grinding, at least that is their strongest talking point.

Mr. Malone: All right, go ahead.

Cross-examination by Mr. Bane.

X. 1 Your argument in opposition to that argument of the salesmen of the grinding mills is what?

A. We are not grinders.

X. 2. That is the only way you argue, you just say, yes, we are not grinders, and stop there, is that it?

A. No, sir.

X. 3. Go ahead and tell the rest of it?

A. I tell them that blenders, the three things, the main things which constitute flour as told me by our chemist was moisture, ash and gluten, and that the blender analyze his flour and if a piece of flour is heavy in moisture and the balance is light in moisture, he blends them and gets a more uniform piece of goods, that the grinder cannot do that, that he simply can set his rollers to crush the wheat and he put it out.

X. 4. Go on?

A. I used to be with a grinding mill and we would have complaints that this barrel of flour was better than the other, or, it was not as good as that last one, and I did not know the trouble myself until the chemist of the "Red Mill" told me that was the reason.

Mr. Malone: When you say the "Red Mill," you mean the Nashville Rolling Mills?

A. Yes, Nashville Rolling Mills.

X. 5. The same thing is true for gluten or proteins content?

A. Yes.

X. 6. The blender analyzes his flour and if he has one high in Gluten or Protein he mixes that with a lower to keep up the uniformity of the grade, is that right?

A. Yes.

X. 7. The same thing is true for ash content?

A. I suppose so.

X. 8. The starch content?

A. In other words, he gives you a uniform piece of goods.

X. 9. You answer his argument with the argument that the blender does the things that you have told us?

A. Yes.

X. 10. And therefore is able to make a more uniform grade of flour?

A. Yes.

X. 11. That is your answer and argument?

A. Yes, sir; that is one. There are several of them of course, but that is the main argument.

X. 12. That is the argument you got from the chemist at the Nashville Roller Mills?

A. Yes.

X. 13. The man who is at the head of the Nashville Roller Mill laboratory?

A. Yes, it was, and I was asking for that information to find the trouble that the grinder had.

X. 14. What grinding mill were you with?

A. I was a broker for several. I started with the Duquain Mill of Duquain, Illinois. They are out of business now.

X. 15. How long have you been a salesman for the Nashville Roller Mills?

A. About six years.

X. 16. About six years, I believe you say?

A. Yes.

X. 17. What were you doing prior to that time?

A. I was with the Dick Chemical Company of Greensboro, North Carolina.

X. 18. Selling salve?

A. Yes, sir.

X. 19. How long were you with them?

A. About eleven years.

X. 20. Did you find the experience in selling salve help you salving the grocers into the idea of your flour, that your flour was better than mill flour?

A. No, sir, I don't think it did.

X. 21. You don't think it did?

A. I only wish it had.

X. 22. The concern that does not analyze the flour that it buys, you have told us here a blender does, in order to determine these protein contents in the flour that he buys to blend, so as to mix a high with a low make a uniform protein content, a uniform starch content, a uniform moisture content, a concern that buys flour and mixes it without doing that, would you call him a blender?

A. No, I don't know that I would.

X. 23. What would you call him?

A. A mixer.

X. 24. A mixer could not maintain a uniform grade

of flour like that, which you have characterized as a blender, could he?

A. I don't know. I would not say positive.

X. 25. It would not seem that he could unless he analyzed it?

A. No, sir. I would not think that he could make as good a piece of goods.

X. 26. You do not see how he could, do you? He does not analyze these things and know what the protein content, the moisture content of the flour is? That is, that he was mixing, he could not keep the product uniform?

A. Yes, by using one grade of wheat all the time, he could.

X. 27. He does not use one grade of wheat, does he?

A. Yes, but by using flour from the wheat.

X. 28. Yes, but by buying from various mills?

A. He could not do that.

X. 29. He could not do that?

A. I don't think he could.

X. 30. You could not see how he could?

A. I don't think he could.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Mr. McWilliams, under your classification or differentiation between blenders and mixers, what do you characterize the concerns in Nashville, do you classify them as blenders or mixers under your differentiation?

A. Well now, I don't know, that has not come up with me so much as to the mixer, as the blender has. I don't know which is which.

Mr. Bane: You do not know which are blenders and which are mixers?

A. No, sir; I have not been in the mills.

Examiner Sheppard: All right, that is sufficient.

Witness excused.

D. E. CLAYTON was thereupon produced as a witness, and having first been duly sworn, testified as follows:

D. E. Clayton

Direct Examination by Mr. Malone.

Q. 1. You live in Lawrenceburg, Mr. Clayton?
A. Yes, sir.
Q. 2. That is in Tennessee?
A. Yes.
Q. 3. Middle Tennessee?
A. Yes.
Q. 4. What is your occupation?
A. Groceryman.
Q. 5. Retail?
A. Yes.
Q. 6. Do you handle flour?
A. Yes.
Q. 7. Plain or self rising or both?
A. Well, mostly just plain, very little self rising.
Q. 8. Do you buy flour from any Nashville concern?
A. Yes.
Q. 9. What is that?
A. The Royal Milling Company.
Q. 10. Has that flour given satisfaction to your trade?
A. Yes.
Q. 11. How long have they been using it?
A. I should say I have been handling it right around ten years, but I don't know for sure just how long, but something like that.
Q. 12. Something like ten years?
A. Yes.
Q. 13. Did you know when you were handling that flour that the Royal Milling Company was not a grinder but a blender or mixer?
A. Well now, just when I first started in to handling it, I don't know that I knew it was a grinder or a blender, but I have known for a long time it was only a mixer.
Q. 14. You have known that for a long time?
A. Yes.
Q. 15. Does it make any difference to you in buying flour whether a man is a mixer, a blender, or whether he is a grinder, so long as the price is right and the flour stands up with your trade?
A. No, sir; it don't make any difference.
Q. 16. Does it make any difference to you whether he calls himself a mill, a manufacturer, a milling company or what he calls himself?
A. Oh, no, sir.
Q. 17. What do you buy flour for, on what basis do you buy flour? What influences you in buying?

A. Well, first the price and quality.

Q. 18. And the satisfaction to your trade?

A. Yes.

Q. 19. How does your trade ask for flour?

A. They say just give me a sack of flour, they just come in and ask certain brands like asking for anything else.

Q. 20. What quantity of flour do you buy from the Royal Milling Company?

A. Well, as a general rule, if I have not got too much flour of other brands, I generally buy about one hundred twenty-five barrels.

Q. 21. At one time?

A. Yes.

Q. 22. And about how often do you buy during the year?

A. Well, of course I can handle about a car a month when business is good, but I do not buy a car of their flour near every month, but take through the fall when money is plentiful I can handle a car a month.

Q. 23. A car is about two hundred fifty barrels?

A. One hundred twenty-five barrels.

Q. 24. One hundred twenty-five barrels?

A. Yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Flour of what other concerns in Nashville do you handle, Mr. Clayton?

A. I handle quite a little of Cherokee flour.

X. 2. Cherokee Mills?

A. Yes.

X. 3. What else?

A. I handle some from the Colonial Mills.

X. 4. The Colonial?

A. And I get some, have some right now in stock from the Waverly Mills, I believe is the first I ever bought of their flour.

X. 5. The Waverly Mills, is that in Nashville too?

A. Yes.

X. 6. Do you handle flour from any other concern that might not be in Nashville? Are those the only ones you buy flour from?

A. Right now. I have bought flour from a concern at Columbia that went out of business.

X. 7. What was that?

D. E. Clayton

A. The City Mill & Grain Company.

X. 8. Those are the concerns you bought from?

A. Well, a way back yonder I bought some flour from the Ashland Roller Mill Company.

X. 9. How long have you been in business, Mr. Clayton?

A. Twenty years.

X. 10. In the retail grocery business at Lawrenceburg all the time?

A. Yes, sir.

X. 11. What size town is Lawrenceburg?

A. Four thousand.

X. 12. What percentage of your trade is darky trade?

A. I have not got any darky's trade. There is not a darky trade there, much.

X. 13. Very little?

A. Very little.

X. 14. What character of trade is your trade?

A. Farmer.

X. 15. The Colonial Mills, The Colonial Milling Company is not it?

A. Yes.

X. 16. That is an actual milling concern, is not it?

A. Yes, I understand that it is.

X. 17. The same thing is true of the Cherokee Mills?

A. The Cherokee Mills is blenders, that is the way I have been informed. I don't know whether it is or not. I have never been there.

X. 18. They do not grind wheat, as you understand?

A. That is my understanding.

X. 19. What about the Waverly Mills?

A. They are supposed to be mixers, from what I understand.

X. 20. That is mixers?

A. That is what I understand.

X. 21. Do you not understand they grind.

A. No, sir.

X. 22. What about the City Grain & Elevator Company?

A. You mean at Columbia?

X. 23. Yes?

A. They are real grinders, millers.

X. 24. What about the Ashland Roller Mills?

A. They are real millers.

X. 25. How did you learn the Royal Milling Company was not an actual concern grinding wheat into flour?

D. E. Clayton J. M. Whiteside

A. I have had salesmen tell me, trying to sell flour, that they were just blenders and not millers.

X. 26. That is the way you learned it?

A. Yes.

Mr. Bane: That is all.

Examiner Sheppard: Anything else, Mr. Malone?

Mr. Malone: That is all.

Witness excused.

J. M. WHITESIDE, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you live, Mr. Whiteside?

A. Tupelo, Mississippi.

Q. 2. What is your business?

A. Grocery business.

Q. 3. Wholesale or retail?

A. Wholesale.

Q. 4. How long have you been in that business?

A. About twenty years.

Q. 5. Do you handle flour, plain or self-rising, or both?

A. Yes.

Mr. Bane: Which?

Q. 6. Of which do you handle the most?

A. About fifty-fifty.

Q. 7. Do you handle any flour produced by a Nashville concern?

A. Yes.

Q. 8. What is that?

A. The Cumberland Valley Milling Company.

Q. 9. Is that a mill or a trade name for Mr. Tupper, or do you know about that?

A. Yes.

Q. 10. For the Nashville Roller Mills?

A. Yes.

Q. 11. How many wholesale houses have you Mr. Whiteside?

A. Four.

J. M. Whiteside

Q. 12. How long have you been using this flour of the Nashville Roller Mills, the Cumberland Valley Mill?

A. About five years.

Q. 13. Has it given satisfaction to your trade?

A. Yes.

Q. 14. Does it influence you in buying flour whether you are buying from a blender, so-called, or a mixer, so-called, or a grinding mill?

A. No, sir; it does not.

Q. 15. What does influence you in buying flour?

A. Well, the character of the mill or blender, and the quality and the price.

Q. 16. The quality and the price?

A. Yes.

Q. 17. And the satisfaction to your trade?

A. Yes.

Q. 18. Do you know, and have you known when you were buying flour from the Cumberland Valley Milling Company that it was not a grinder of wheat, that it was a blender?

A. We knew it was a blender, yes.

Q. 19. And did not grind wheat?

A. Yes.

Q. 20. If I understand you, the use of the word "mill" or "milling" in a man's name or whether he calls himself a "manufacturer" cuts no figure with you in buying flour?

A. No, sir.

Q. 21. What is your annual business, Mr. Whiteside?

A. Approximately, in dollars and cents?

Q. 22. In dollars and cents, yes?

A. About one and a half to two million.

Q. 23. How much flour do you handle?

A. From thirty to thirty-five thousand barrels.

Q. 24. A year?

A. A year.

Q. 25. Do you know how retail customers call for flour?

A. The consumer?

Q. 26. Yes, the consumer?

A. Yes, by brand.

Q. 27. By the brand. Do the mill salesmen call on you, I mean from the grinding mills?

A. Yes.

Q. 28. What do they tell you about these Nashville concerns using the word "mills" in their name, do they say they are grinders or not?

A. No, sir; they say they are blenders.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Do the salesmen of the mills tell you anything about that, generally?

A. As a generai rule, well the better class of salesmen have learned not to knock.

X. 2. Some few of the salesmen from the mills will tell you that they do not grind the wheat into the flour, but the vast majority of the mill salesmen calling on you do not tell you anything about the mills?

A. The better element of salesmen have quit knocking the blenders to a certain extent.

X. 3. And the most of the salesmen of the mills that call on you are of the better element?

A. Yes.

X. 4. They just try to sell their flour, is that true?

A. Yes.

X. 5. Have you bought any flour from the Nashville Roller Mills?

A. No, sir; the Cumberland Valley, our business is all with the Cumberland Valley.

X. 6. Has the Nashville Roller Mills tried to sell you?

A. Their representative, or the Cumberland Valley Mills sells us a few brands. for customers of theirs who want the Nashville Roller Mills' brand.

X. 7. Those are two different concerns, the Nashville Roller Mills and the Cumberland Valley Mills?

A. We only know one concern on our books, the Cumberland Valley.

X. 8. Is the Nashville Roller Mills, and the Cumberland Valley Mills two different concerns or the same concern?

A. We understand it is the same concern.

X. 9. Do you handle any other flour from Nashville?

A. No, sir.

X. 10. Have you handled any other flour from Nashville?

A. No, sir.

X. 11. When did you learn that the Cumberland Valley Milling Company did not grind the wheat into flour it sold?

A. We knew it did not grind wheat before we bought it.

X. 12. How did you learn it?

A. By asking a salesman.

X. 13. You asked a salesman and he told you?

A. Yes.

X. 14. What made you ask him, the fact you heard there were concerns in Nashville using the name Mills or Milling in their names that did not grind wheat into flour?

A. Nashville has been known as a blender's market for a long time, as I understand.

X. 15. You had heard there were concerns using "Mill" or "Milling" in their names that did not grind wheat, therefore, when this new concern came to you, you asked the salesman what it was?

A. Yes, I wanted to know what it was.

X. 16. That is true?

A. Yes. We had also bought from a blender in Memphis for quite a while.

X. 17. What name was that?

A. The Dixie Portland Mills.

X. 18. They call it just the Dixie Portland Flour Company at this time?

A. At this time, understand, when I first bought though, about ten years ago, they were known as the Dixie Portland Mills.

X. 19. Did they grind wheat into flour?

A. Not in Memphis.

X. 20. Was it connected with a plant grinding flour?

A. I could not say. They had a mixing plant.

X. 21. You would not have us believe the Cumberland Valley Milling Company is the only concern from whom you buy flour?

A. No, sir.

X. 22. You buy from others?

A. Yes.

X. 23. What are they?

A. The Globe Mills of Ogden, Utah; the Larabee Flour Mills Company of Kansas City, Missouri—

X. 24. That is two, I thought you said three?

A. And the Cumberland Valley.

X. 25. Those last two you gave us are actual Milling Concerns, are they?

A. Yes.

X. 26. Grinding wheat into flour?

A. Yes.

Mr. Bane: That is all.

Examiner Sheppard: Just one question. I un-

derstand you have had a broad experience in selling groceries to the public?

A. I have sold groceries for quite a while.

Examiner Sheppard: What is your opinion as to whether or not the average customer who comes into your store for the purpose of buying flour, are they interested in the manufacturer or blender of the flour?

A. No, sir. The average customer don't know who makes the flour, in my experience.

Examiner Sheppard: He is interested in the brand?

A. He buys by the brand, the brand that gives him satisfaction.

Examiner Sheppard: All right.

Recross-examination by Mr. Bane.

RX. 1. Do you come in contact with the customers that you sell to?

A. Quite a few, yes, sir.

RX. 2. You sell to some?

A. Some come into the store. We sell through salesmen.

RX. 3. You do not travel?

A. No, sir.

RX. 4. It is relatively a very small proportion of your trade that you come in contact with?

A. I try to see the trade once or twice a year.

RX. 5. Then you see them and keep in contact with them?

A. Yes, and I handle all orders.

RX. 6. You handle them as they come in through the store, sent in by the salesmen?

A. Yes.

RX. 7. You do not come in contact with the public at all, with the trade?

A. Yes, we have a lot of trade that will come into the store to buy goods.

RX. 8. Do you sell wholesale and retail?

A. No, sir; only to the merchants.

RX. 9. You only come in contact with the merchants?

A. Yes, sir.

Mr. Bane: That is all.

Witness excused.

T. W. HENSLEY, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Hensley, you live in Iron City, Tennessee?
A. Yes.
Q. 2. What is your business?
A. Merchant.
Q. 3. Retail?
A. Yes.
Q. 4. How long have you been in business there?
A. About six or seven years.
Q. 5. Do you handle flour?
A. Yes.
Q. 6. Plain, self-rising or both?
A. Plain. I don't handle self-rising.
Q. 7. No self-rising?
A. No.
Q. 8. Do you buy any flour from a Nashville concern?
A. Yes.
Q. 9. What flour is that?
A. I buy from the Royal Milling Company.
Q. 10. You buy from the Royal Milling Company?
A. Yes.
Q. 11. How long have you been buying their flour?
A. About five years, four or five years.
Q. 12. Has it given satisfaction to you and your trade?
A. Yes.
Q. 13. Did you know when you were buying from them that they were blenders and not grinders?
A. Yes.
Q. 14. What influenced you in buying flour?
A. Well, the price and quality and the service they give, the satisfaction it gives.
Q. 15. The satisfaction to your trade?
A. Yes.
Q. 16. Does the man's name influence you, whether he calls himself a mill or not?

A. No, sir.

Q. 17. Or a manufacturer?

A. No, sir.

Q. 18. How do your customers ask for flour when they come into the store?

A. They ask for certain brands.

Mr. Malone: That is all, Mr. Examiner.

Cross-examination by Mr. Bane.

X. 1. What sized city is Iron City, Tennessee?

A. It has about five hundred.

X. 2. Are you the only retail merchant there?

A. No, sir.

X. 3. Are you the largest, the smallest or what?

A. Well there are some larger than me and some smaller than me.

X. 4. What percentage of your trade is darky trade?

A. A mighty small per cent.

X. 5. By that you mean as much as forty per cent?

A. No.

X. 6. Twenty-five?

A. No, sir.

X. 7. What, can you give us an idea?

A. Well, I don't know. There is not very many niggers there. I don't get but very little of the trade. I don't know what per cent.

X. 8. Do you buy flour from any other concern in Nashville except the Royal Milling Company?

A. Not now, at the present time.

X. 9. Have you bought any from any others?

A. Yes.

X. 10. What others?

A. The Maury Milling Company of Mt. Pleasant.

X. 11. That is not Nashville?

A. I didn't buy any more from Nashville besides the Royal Milling Company, not now.

X. 12. Well, have you bought flour from any other concerns in Nashville, other than the Royal Milling Company?

A. Yes, but not for the last two or three years.

X. 13. What concerns were they?

A. The Watauga Mills.

X. 14. The Watauga Mills?

A. Yes.

X. 15. Any others?

A. No, sir; that is all.

X. 16. Those are the only two concerns you have bought from in Nashville?

A. Yes.

X. 17. Why did you stop buying from the Watauga?

A. I liked the others best.

X. 18. Did you have trouble with the Watauga product?

A. No, sir.

X. 19. Did you find the other a better grade?

A. I like it better.

X. 20. Why didn't you find out before you tried it?

A. I just bought it, and these salesmen come around.

X. 21. Is not it true you had trouble with the Watauga Milling Company's produce and sent some back?

A. No, sir. No, sir.

X. 22. Or you did have trouble with it and they made an adjustment?

A. No, sir.

X. 23. Did you ever hear of the Richland Milling Company?

A. Yes.

X. 24. Did you buy from them?

A. Yes.

X. 25. Did you ever hear of the Empire Milling Company?

A. No, sir.

X. 26. Did you ever hear of the Modern Milling Company?

A. Yes.

X. 27. Buy any from them?

A. No, sir.

X. 28. Did you ever hear of the Southern Flour Mills?

A. Yes.

X. 29. Buy from them?

A. No, sir.

X. 30. Did you ever hear of the F. J. McCarthy Milling Company?

A. Yes.

X. 31. Buy any from them?

A. No, sir.

X. 32. Then you have been solicited by the Watauga Milling Company, is that right?

A. Yes, sir.

X. 33. The F. J. McCarthy Milling Company?

A. You mean buy from them?

X. 34. No, you have been solicited by them. To buy from them?

A. Yes.

X. 35. The F. J. McCarthy Milling Company?

A. Yes.

X. 36. The Modern Milling Company?

A. Yes.

X. 37. The Southern Flour Mills?

A. Yes.

X. 38. The Royal Milling Company?

A. Yes.

X. 39. The Richland Milling Company?

A. Yes.

X. 40. At least six different concerns from Nashville, is that right?

A. Yes.

X. 41. What kind of concerns are the Maury Milling Company at present?

A. They are grinders, I think they did their own grinding.

X. 42. Actual milling concern?

A. Yes.

X. 43. How did you learn that the Royal Milling Company did not grind wheat into flour?

A. The salesmen told me they did not.

X. 44. Who told you?

A. The salesmen.

X. 45. The salesmen for who?

A. My brother, Hensley sells to him.

X. 46. Oh, your brother sells for the Royal Milling Company?

A. Yes.

X. 47. That is the reason you buy from them?

A. That is one reason.

X. 48. Is not that the chief reason?

A. No, sir.

X. 49. Your chief reason was not that you wanted to give business to your brother?

A. I have bought stuff from them before he ever began working for them.

X. 50. How long has he been working for them?

A. Oh, six or seven years.

X. 51. I thought you said you bought five or six years?

A. I did, but I bought before he started traveling for them.

X. 52. You bought from them before he started to travel for the Royal Milling Company?

A. Yes.

X. 53. Then you stopped buying from them?

A. Yes.

X. 54. Then he started traveling four or five years ago, is that it?

A. Yes.

X. 55. Then you started buying again?

A. Yes, sir.

X. 56. You learned they were not a concern grinding wheat into flour, but blending concern?

A. Yes, sir.

X. 57. He told you so?

A. Yes.

X. 58. What character of concern did you think the Watauga Milling Company was when you were buying from them?

A. I didn't know?

X. 59. You did not know?

A. No, sir.

X. 60. It called itself the Watauga Milling Company, didn't it?

A. Yes.

X. 61. What character of concern did you think it was when it came to you?

A. I didn't know whether it was a mill or not.

X. 62. Did not that mean to you Mr. Hensley, that is, if a man comes in to you and says, I am representing the Sunnyside Mills and want to sell you some flour, that means a concern actually making flour from wheat, doesn't it? It would at the time you were buying from the Watauga Mills?

A. I wouldn't know whether it was grinders or not.

X. 63. You did not know?

A. No.

X. 64. What did it indicate to you, it was a concern grinding wheat into flour or not?

A. It indicated to me it was a concern in Nashville selling flour. I didn't know what it was.

X. 65. I am asking about the name—Watauga Milling Company—back at that time?

A. I didn't know.

X. 66. When it came in as the Watauga Milling Company, what kind of concern did you think it was?

A. I thought it was a concern selling flour from Nashville.

X. 67. In other words, the word "Milling" did not mean a concern grinding wheat back there, then?

A. I didn't know whether it was a grinder or a blender.

X. 68. I know, but I am asking what that term meant to you at that time?

A. I didn't think much about it.

X. 69. That did not indicate to you that it was a concern grinding wheat into flour? Is not it a fact that you would naturally think it was a concern grinding wheat into flour, if I came in to you and wanted to sell you some flour from the Sunnyside Milling Company and you did not know what it was, what would you think I was representing?

A. Well, if I thought they were grinders, anything like that, I would ask.

X. 70. That is what you would do, you would ask me now, to find out what I was, would not you?

A. If I wanted to know I would.

X. 71. Yes, you would ask me?

A. Yes.

X. 72. Mr. Hensley, would not you think that you could buy flour cheaper from a concern, I mean of the same grade of flour, flour of the same grade, is not it natural to think you could buy flour of the same grade cheaper from a concern that bought the wheat and ground the flour and sold it right to you, than from a concern that bought the flour from one who had ground it, from the wheat, sold it and then transported to his place of business and then put it through some process, then again sold it to you?

A. I think he—I think you could buy it as cheap from a blender as you could from the mills, and maybe cheaper.

X. 73. Than buying direct from the mills?

A. Because so many mills do not sell direct to the merchant but sell through a jobber.

X. 74. I am talking about selling direct?

A. There are none down there to sell direct, we buy through jobbers.

X. 75. And because these other boys undersell the jobber?

A. Yes, sir.

X. 76. But if the mill that sold direct to you, would you think you could get it cheaper from the mill?

A. I don't know whether I could or not.

X. 77. That is your opinion?

A. I have not bought any direct from a mill.

X. 78. You have not bought direct from a mill?

A. Nothing only the Maury Milling Company at Mt. Pleasant, close home.

Mr. Bane: That is all.

Witness excused.

A. L. CULPEPPER was thereupon produced as a witness and, having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you reside, Mr. Culpepper?
A. Meridian, Mississippi.
Q. 2. What is your business?
A. Wholesale Grocery.
Q. 3. How long have you been in that business?
A. About eight years, about eight and a half years.
Q. 4. Do you handle flour?
A. Yes.
Q. 5. Plain or self-rising or both?
A. Both.
Q. 6. About what per cent of plain and about what per cent of self-rising?
A. I suppose about sixty-five per cent is self-rising.
Q. 7. Have you been buying flour from any Nashville producer?
A. Yes.
Q. 8. What is that?
A. The Cumberland Valley Milling Company.
Q. 9. That is Mr. Tupper's concern?
A. Yes. I have also bought some from the Mero Mills, some few cars.
Q. 10. Are they in business now, do you know?
A. Yes.
Q. 11. The Mero Mills?
A. Yes.
Q. 12. Mr. Snell has taken that over now?
A. Yes, Snell Milling Company is really what it is now, I think.
Q. 13. Has that flour you bought from the Cumberland Valley Milling Company given satisfaction to your trade?
A. Yes.
Q. 14. To you?
A. Yes.
Q. 15. How long have you been buying it?

A. About six and a half years.

Q. 16. Did you know when you were buying that flour that the Cumberland Valley Mills was not a grinding mill?

A. I did, yes.

Q. 17. Does it make any difference to you in buying flour whether the producer is a so-called "Miller" or a so-called "Blender"?

A. No, sir.

Q. 18. What influences you in buying flour?

A. Principally the price and the grade of the flour.

Q. 19. And the satisfaction to the trade?

A. Yes, satisfaction to the trade, of course.

Q. 20. What does your yearly business amount to, approximately?

A. About $600,000.00, not quite three-fourths of a million.

Q. 21. About how much flour do you handle yearly?

A. Well, we will handle about three cars a month, about six hundred sixty or so barrels, you might say a month, I would judge.

Q. 22. Some eight thousand barrels a year?

A. Yes.

Q. 23. You do not buy all of your flour from Mr. Tupper's concern?

A. Not all of it, principally, though.

Q. 24. Do you know how the consumer, the retail consumer calls for flour, buys flour?

A. He calls for it by brand as a rule.

Mr. Malone: That is all.

Mr. Bane: Stand aside.

Witness excused.

ROY McDONALD, being produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you live, Mr. McDonald?

A. Chattanooga, Tennessee.

Q. 2. What is your business?

A. I am in the chain grocery business, chain store grocery business.

Q. 3. What is the name of that concern?

A. The Home Stores.

Roy McDonald

Q. 4. Do you buy flour in your business?

A. Yes.

Q. 5. Plain or self-rising or both?

A. About fifty-five per cent plain and forty-five per cent self-rising.

Q. 6. Do you handle any flour produced by any Nashville concern?

A. Yes.

Q. 7. What is that?

A. The Nashville Roller Mills.

Q. 8. And what is the flour that you handle?

A. We handle three grades of plain, three grades of self-rising, two grades are under our private brand and the other grade is under a mill brand.

Mr. Bane: Does it pack it for you under those private brands?

A. Yes.

Q. 9. How many chain stores do you operate?

A. We have forty-one, thirty-eight in Chattanooga, one at Soddy, Tennessee, one at Daisy, Tennessee and one at LaFayette, Georgia.

Q. 10. Does your father have any chain store business, Mr. McDonald?

A. My father has a business at Knoxville, Tennessee. He operates sixty-five retail grocery stores at Knoxville.

Q. 11. Do you know whether he handles any of Mr. Tupper's flour?

A. Yes. I was associated with my father three years before the time I went into business for myself.

Q. 12. Now, speaking for the flour that was handled when you were with your father, and the flour that you handle personally from Mr. Tupper's mill, has that given satisfaction?

A. Absolutely.

Q. 13. What influences you in buying flour?

A. The thing that would influence me in buying flour would be the character and the organization of the mill, the facilities, the plant equipment of the mill, and its ability to furnish me with a uniform, consistent grade of flour the year round at a price which would enable me to resell it at a profit.

Q. 14. And what about satisfaction to the trade?

A. That is implied in all the rest. That is merely the result of the other qualifications.

Roy McDonald

Q. 15. Does it make any difference to you in buying flour whether it is made by a so-called "Grinding Mill," or so-called "Blender"?

A. Whether—no, it would not.

Q. 16. What a man calls himself, whether he used the word "Mill," "Milling" or "Manufacturing," makes any difference?

A. No, there are so many blenders, grinders, that to know the name of the mill you have to know what it is. There is no longer any distinction.

Q. 17. The word "Milling" has no distinct significance?

A. Has no distinction, no, sir.

Q. 18. Do you know how the consumers buy flour, how they call for flour?

A. Yes, they call for it by the brand name, and largely it is influenced by advertising, and by advertising we will sell the first sack, but the quality of the flour will sell the second sack.

Q. 19. And the customer will come in and call for that same brand?

A. Yes.

Q. 20. What volume of business do you do in Knoxville and Chattanooga? Those two stores, please.

Mr. Bane: I wonder if he knows what the volume is of their business?

A. Yes. The Knoxville volume of business was one million five hundred and some odd thousand dollars. Our business in Chattanooga was a million, fifty-five thousand dollars.

Q. 21. How much flour do those two concerns use?

A. Our figures for 1929 were slightly over eleven thousand barrels for Chattanooga, and slightly over sixteen thousand five hundred barrels for Knoxville, a total of something over twenty-seven thousand, five hundred barrels.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. I just have two questions I want to ask, is all that flour you handle from the Nashville Roller Mills?

A. For the last several years, we have not bought a sack of any other kind of flour.

X. 2. How long?

A. Seven years.

X. 3. At other places?

A. At any other place.

X. 4. How long have you been in business for yourself in Chattanooga, Tennessee?

A. Since August, 1924.

Examiner Sheppard: Just one question. From your experience in handling goods and the public, I want your opinion as to whether or not the public, the average customer, is interested in the manufacturer or mixer from whom the flour came?

A. I think I am well qualified to answer that question. I started selling groceries when I was eleven years old. What time I was not in school you might say, I jumped counters selling groceries direct to the consumer. I have been in what I would think was intimate contact with the consumer, and have since tried to maintain that contact. The consumer is merely interested in the satisfaction which she gets from the sack of flour, which they bought. They may buy one sack of flour and try a brand, and if it is satisfactory they will come back for it. My private brand of flour, and which I naturally want to maintain on a high standard of quality, if the sack of flour does not come up to their expectations, regardless of what the reason is, they will not buy that sack of flour a second time. I might add that we make this guarantee in our advertising, and so far as I know I have never seen it anywhere else, that if, for any reason, this particular grade of flour fails to give you absolute and entire satisfaction bring us the empty sack and we will refund you the full purchase price. Our experience in that, is that we get two empty sacks back out of each thousand sacks we sell.

X. 5. It is your opinion the trade is not interested in the manufacturer?

A. Absolutely.

X. 6. (Mr. Bane) How old are you?

A. I am twenty-eight.

X. 7. Did you go to college?

A. Two years.

X. 8. You went to High School?

A. Yes, sir.

X. 9. What college did you go to?

A. Georgia Tech.

X. 10. Georgia Tech for two years?

A. Yes.
Witness excused.

ALLEN R. CORNELIUS, having thereupon been produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Your name is Allen R. Cornelius?
A. Yes.
Q. 2. Where do you live, Mr. Cornelius?
A. Nashville, Nashville, Tennessee.
Q. 3. What is your business?
A. Flour broker.
Q. 4. With what concern are you connected?
A. W. R. Cornelius & Son.
Q. 5. And you are the son in that firm?
A. Yes.
Q. 6. Mr. Cornelius your business is handling flour, I believe you say?
A. Selling.
Q. 7. Selling flour?
A. Yes.
Q. 8. You sell to these Nashville self-rising manufacturers, do you?
A. Yes.
Q. 9. Did you ever sell any flour to grinding mills?
A. Occasionally.

Mr. Bane: That is objected to, Mr. Examiner, as incompetent, immaterial and irrelevant.

Mr. Malone: That is one of our defenses. You said, Mr. Examiner, if you will recall, when that question was asked on cross-examination of one of Mr. Bane's witnesses that you would permit me to introduce that proof.

Examiner Sheppard: I will let him answer.

A. I have sold some.
Q. 10. (Mr. Malone) To mills that were competing with these Nashville blenders?
A. Yes, sir.

Mr. Bane: Objected to, Mr. Examiner, as irrelevant, incompetent and immaterial.

Examiner Sheppard: I don't think so. I will let him answer if he knows.

A. Yes, sir.

Q. 11. Do you know whether any of these grinding mills to whom you sell flour, put it out under their own brands?

Mr. Bane: That is objected to, Mr. Examiner, as incompetent, immaterial and irrelevant. The situation is this—

Examiner Sheppard: Read the question.

(The question was then read by the reporter.)

Examiner Sheppard: What is the objection?

Mr. Bane: The objection is just this, Mr. Examiner, we are charging in this complaint that these concerns in Nashville, do not grind the wheat into flour, but use the word "mill" and "milling" in their corporate names and represent themselves as manufacturers of flour, or they are wrongfully using that term, because they do not actually grind the wheat into flour that they sell. It is no justification or excuse, for that wrongful use upon their part, that some one else, if they do, does the same thing. That question has arisen in at least three of the Commission's cases, and has arisen, of course, numerous other times, as in the Winstead Hosiery Case, where it was stipulated that practically all competitors of the Winstead Hosiery Company had used the practice complained of the Winstead Hosiery Company over many years, but in spite of that it was held no justification.

In the Hall Brothers case the evidence was offered that competitors of Hall Brothers were engaged in the identical practice that Hall Brothers were charged with wrongfully using. That evidence was excluded, the case was taken to the Circuit Court of Appeals and that was assigned as one error, and the Circuit Court of Appeals specifically and definitely upheld that ruling excluding that evidence, stating it was not an excuse.

In the case of Eatmore vs. Pratt, 196 Federal, a subpoena duces tecum was made to have brought in a contract, if possible, to show others were violating the patent. The subpoena was refused and appeal taken to the Circuit Court of Appeals and the appeal upheld on the ground that the fact that others were

doing the same thing was in no wise a justification or relevant or material in the case of this particular concern. And there are many other cases, including Tucker vs. Peeler, 297 Federal, holding that the fact that some other concern is doing the same wrong, is no defense.

Examiner Sheppard: What do you say, Mr. Malone?

Mr. Malone: Mr. Examiner, one of our defenses in this case, that our competitors are engaged in the same practice against us, that it is charged we are using against them. We do not say it is wrongful in these cases, we insist that it is a re-manufacturing operation in these cases, that the grinding mill makes or buys its flour and then puts it into self-rising or blended flour which is exactly like our people do. It is the same thing. We do not say that either one is wrong. Now, of course if there was some admitted wrong on our part, it would be no justification that someone else was doing wrong, but that is the question we are going to try here, whether we are doing wrong. We say we are millers and manufacturers and have the right to use the word "Mills" and that we are manufacturers. We shall show that the census bureau so calls or classifies us. We have already shown the railroads classified us in that way by giving us "Milling in transit" privileges. Our instance is, that where a competitor is using just the same methods of the competitors in the field, using the same methods, then the Commission cannot pick out one man and protect the others against him, when all are engaged in the same practice.

Examiner Sheppard: In other words, you want to show it is a general trade practice.

Mr. Malone: Exactly, it is, and that they buy flour, process it, and put it out as self-rising, which is the most important part of our trade, just like we do. It is a general trade practice. We do not say it is wrong in either one of them, but you cannot single us out and say we shall not do that, against the grinding mills when they are doing exactly the same thing against us.

Mr. Bane: Mr. Examiner, if it is not wrongful, what justification is there in proving that the other people are doing it too? There is no justification at all. The whole question is, whether it is wrongful in this case. To prove someone else who is charged in no way—to prove someone else does it, in no way

determines whether it is right or wrong. Further, if he wants to prove it as a trade custom, that is not the way to prove a custom. You do not prove a trade practice or a trade custom by calling one man and asking him if he has sold one mill in that manner. That does not prove a trade custom. You cannot prove it in that way, and the Commission is not attempting to single out any one. If it decides that this practice is wrongful the Commission will stop the mills if they are doing a wrongful thing just as well as the blenders, and the fact someone else is doing it, assists in no way in determining the question as to whether or not it is wrongful on the part of the blenders in doing it. How does the fact that a mill is doing something assist us in any way to determine whether the doing of the thing is wrong? It is cluttering up the record with a whole lot of irrelevant and incompetent testimony that does not in any way establish the issue.

Mr. Malone: I just want to say that we have an authority where the Court comments on the fact that the other people in business were following exactly the same practice in an enlarged picture case.

Mr. Bane: That was the Chicago portrait case.

Examiner Sheppard: If this was a case at Court, a regular trial of the case, I would bar this testimony, because it is a well established principle that the doing of the alleged unlawful acts by others cannot justify the doing of them on the part of the persons under accusation. But I have known in the trial of Federal Trade Commission cases many times when the Commission itself has gone over the country to show the wide prevalence of a certain alleged unfair method of competition, and if you desire to go ahead and to show on your part the prevalence of the same custom and consider it, or want to admit it as a defense in this case, I will allow you to do it.

Mr. Bane: Mr. Examiner, could he—not arguing after you have decided—I do not see how in any practice you have heard of, even in the practice before the Commission, or the Interstate Commerce Commission, I have ever heard before of any rulings that allows the proof of alleged wrongful practices on the part of one to be made a basis for establishing the complaint against another party, that is what the ruling in effect announces. If these people are wrong, we are here to prove that. The Commission when it goes over the country, only goes to establish

the alleged wrongful practice set out in the Complaint. It is not trying to establish that some one else is engaged in it also. This is allowing this proceeding to be turned into a proceeding, not to determine whether the blenders are using wrongful practices, but whether anybody is engaged in it. You are trying to try many cases in this one.

Examiner Sheppard: As I have said, Mr. Bane, I do not consider that that testimony, even if it is proven is a justification for the respondent, but as he wants to submit it as a part of his proof, I think it is my duty to let him submit it and let the Commission pass upon it, giving it what probative value—I shall give it what probative value I think it worth.

Mr. Bane: Note an exception.

Examiner Sheppard: Give the exception to the Commission's attorney.

Q. 12. (Mr. Malone) The last question I asked you was, whether you knew any of these grinding mills to whom you have sold flour, put this flour out under their own brands?

A. Yes, sir; they have.

Q. 13. Do any of these grinding mills to your knowledge sell in other states than in Tennessee?

A. Yes, sir.

Q. 14. Name any grinding mill in this territory or elsewhere to whom you have sold flour?

A. The Gallatin Milling Company at Gallatin, Tennessee, and the Freeland Milling Company of Nashville, Tennessee.

Q. 15. Mr. Cornelius, did you, at my request, turn over certain correspondence and invoices bearing on this subject?

A. Yes, sir.

Q. 16. I hand you first a letter on the stationery of the Abilene Flour Mills Company of Abilene, Kansas, dated May 24th, 1928, addressed to W. R. Cornelius & Son, Nashville, Tennessee, and ask that this be marked for identification?

(Said letter was thereupon marked for identification, as, Respondent's Exhibit No. 19.)

Q. 17. Please state whether or not I have correctly described the letter?

A. Yes, sir.

Mr. Malone: We offer that as Respondent's Exhibit No. 19.

Examiner Sheppard: Any objection?

Mr. Bane: Yes, objected to in the first place, the letter is not properly authenticated or proven. In the second place I object to it, as this is not the way to prove a letter, there is nothing here to show that the Abilene Flour Mills ever wrote the letter, all Mr. Cornelius can say is that he received such and such a letter. The contents of the letter are the clearest kind of hearsay, and no reason shown for introducing it, even within the exceptions in case of hearsay. If you want to find out what the Abilene Flour Mills says other mills are doing, just call them. It is hearsay of the third degree. It quotes, this letter writes what they say other mills tell them they were doing. I further object to the whole thing as immaterial, irrelevant and incompetent.

Examiner Sheppard: What do you say?

Mr. Malone: I understand, Mr. Examiner, that the Commission admits a great deal of hearsay testimony. The books are full of that. And I understand that we are not proceeding here with the same technicality that we would pursue, with, perhaps, if we were in a different position, in a District Court Room. The rule or criterion has often been laid down by the Court, and I can give you citations if necessary, in the Federal Trade Commission cases, that evidence on which an ordinary citizen would act in his own affairs is competent evidence in this case, though it may fall into some of the technical rules, if we were trying a murder case. This is correspondence of a reputable brokerage firm, with its customers, and they are, as the Examiner will see, they are asking about the flour, and the purchase of flour. It comes in the ordinary course of their business and it is evidence, certainly, that I think would influence a man of intelligence in dealing with his own affairs.

Examiner Sheppard: It is the matter of being properly identified by the witness.

Mr. Bane: Just a moment. I do not of course mean to question the repute, or anything like that whatsoever of Mr. Cornelius' firm. But this is not what this letter goes to. This letter is merely a letter, if it is anything, from the Abilene Flour Mills to Mr. Cornelius, and is a letter enclosing an offer to sell Mr. Cornelius some flour. I think a man of

ordinary intelligence knows when you are trying to sell a thing, we are all given to a little puffing, a little exaggerated statements, and this letter is introduced for the purposes showing that mills as stated in here, that some wheat mills throughout the country are apparently buying flour from this Abilene concern, and he tries to state the satisfaction that his flour has given, and so forth. I have no means of cross examining the man who made this statement. I certainly think I should have some means of testing the large and all inclusive statements that he makes in this letter, in his effort to sell flour to this man, which naturally would contain exaggerated statements.

Examiner Sheppard: Let me see the letter.

(The letter was then passed to the Examiner for examination).

Mr. Malone: Mr. Examiner,—

Examiner Sheppard: Mr. Malone, I do not see how this is going to help me at all in this case.

Mr. Malone: Well, I ask that it come in for probative value, whatever value the Examiner may choose to give to it in connection with the entire testimony.

Examiner Sheppard: Under my previous ruling, I will allow you to show if you want to, as a part of your case, that other concerns are practicing the same methods which are alleged against you. But that letter, I do not see that it will help me at all. If you want to use it in your side of the case, I will let it go in.

Mr. Malone: Well, I will offer it for whatever probative value you may see fit to give it.

Examiner Sheppard: All right.

Mr. Bane: An exception, please.

Examiner Sheppard: Well, give it, Mr. Reporter, let it go in.

Q. 18. You did receive that letter in the ordinary course of mail from those people?

A. Yes, sir.

Q. 19. Are they customers of yours, the Abilene Flour Mills?

A. They are correspondents of ours. We sell flour to them.

(The letter was received in evidence as Respondent's Exhibit No. 19).

Allen R. Cornelius

Q. 20. I next hand you a letter from the same people, the Abilene Flour Mills Company of Abilene, Kansas, under date of April 13, 1928, addressed to W. R. Cornelius and Son, and ask if you received that letter in the course of mail, in due course of your business, and file it for identification as respondent's Exhibit No. 20?

A. Yes, sir.

(Said letter was marked for identification, Respondent's Exhibit No. 20).

Mr. Malone: I offer that letter, Mr. Examiner, as Respondent's Exhibit No. 20.

Mr. Bane: I make the same objection, Mr. Examiner, all the way through, as to Exhibit No. 19.

Examiner Sheppard: Let it go in.

Mr. Bane: An exception.

(Said letter was received in evidence as Respondent's Exhibit No. 20).

Q. 21. I next hand you a letter from the same concern, Abilene Flour Mills Company, at Abilene, Kansas, Under date of April 26th, 1928, addressed to W. R. Cornelius & Son, and ask if you received that letter in due course of business, in due course of mail?

(Passing letter to witness for examination).

A. Yes, sir.

Mr. Malone: Mark it for identification as Respondent's Exhibit No. 21.

(Said letter was marked for identification Respondent's Exhibit No. 21).

Mr. Malone: We offer that as Respondent's Exhibit No. 21.

Mr. Bane: The same objection Mr. Examiner, as Exhibit Nos. 19 and 20.

Examiner Sheppard: Mark it and let it go in.

(Said letter was received in evidence as Respondent's Exhibit No. 21).

Q. 22. I next hand you a letter on the stationery of the Maury Milling Company, dated 3-15-28 and will ask you if you received that letter in due course of mail, due course of business, addressed to W. R. Cornelius & Son?

Mr. Malone: Please mark that for identification as Respondent's Exhibit No. 22.

(Said letter was marked and passed to the witness, for identification as Respondent's Exhibit No. 22).

Mr. Malone: We offer that in evidence as Respondent's Exhibit No. 22.

Mr. Bane: The same objection, Mr. Examiner, as Exhibit Nos. 19, 20, and 21.

Examiner Sheppard: Let it go in, Mr. Reporter, marking it to the appropriate number, and give the exceptions.

(Said letter was received in evidence and called Respondent's No. 22).

Q. 23. I next offer a letter on the letterhead of the Murfressboro Mill Company, Murfreesboro, Tennessee, under date of March 16th, 1928, addressed to W. R. Cornelius & Son, and signed Murfreesboro Milling Company, Incorporated, which I will ask to be marked for identification, Exhibit No. 23 and ask if you received it in due course of mail and due course of business?

(Said letter was marked for identification as Respondent's Exhibit No. 23).

Mr. Malone: I offer that letter in evidence as Respondent's Exhibit No. 23.

Mr. Bane: The same objection, Mr. Examiner.

Examiner Sheppard: Let the letter come in, marking it the appropriate number and giving an exception.

(Said letter was received in evidence as Respondent's Exhibit No. 23).

Q. 24. I next hand you a letter on the stationery of the Lovell Milling Company, Hampshire, Tennessee, addressed to W. R. Cornelius & Son, signed Lovell Milling Company, and ask if you received that in due course of business and due course of mail?

(Passing letter to witness for examination).

A. Yes, sir.

Mr. Malone: Please mark the letter for identification as Respondent's Exhibit No. 24.

(Said letter was marked Respondent's Exhibit No. 24 for identification.)

Mr. Malone: We offer that as Respondent's Exhibit No. 24.

Mr. Bane: The same objection.

Examiner Sheppard: Let it go in, noting an exception.

(Said letter was received in evidence as Respondent's Exhibit No. 24.)

Q. 25. I hand you now a letter on the stationery of the same people, the Lovell Milling Company, under date of March 19th, 1928, addressed to W. R. Cornelius and Son, signed Lovell Milling Company, per J. R. Lovell, and ask if you received that in due course of mail, due course of business?

(Passing letter to witness for examination.)

A. Yes, sir.

Mr. Malone: Mark that for identification as Respondent's Exhibit No. 25.)

(Said letter was thereupon marked for identification as Respondent's Exhibit No. 25.)

Mr. Malone: I offer the letter in evidence as Respondent's Exhibit No. 25.

Mr. Bane: The same objection.

Examiner Sheppard: Let it be introduced in evidence, noting the exception.

(Said letter was received in evidence being marked Respondent's Exhibit No. 25.)

Q. 26. I hand you now a letter on the stationery of the Columbia Mill & Elevator Company under date of March 12th, 1928, addressed to W. R. Cornelius & Son, signed Columbia Mill & Elevator Company, and ask you if you received that letter in due course of business, due course of mail?

A. Yes, sir.

Mr. Malone: Mark that letter for identification, please, respondent's Exhibit No. 26.

(Said letter was marked for identification Respondent's Exhibit No. 26.)

Mr. Malone: We offer the exhibit in evidence.

Mr. Bane: The same objection, Mr. Examiner, and it is even an unsigned letter.

Mr. Malone: The letter is signed in typewriting.

Mr. Bane: By the Mill Company, no name at all.

Examiner Sheppard: Let it go in noting the exception, Mr. Reporter.

(Said letter was received in evidence marked Respondent's Exhibit No. 26.)

Q. 27. I hand you now a letter on the stationery of the same firm, the same Company, the Columbia Mill & Elevator Company, Columbia, Tennessee, dated March 17th, 1928, signed Columbia Mill & Elevator Company, W. A. Dale, and asked if you received that in due course of business, due course of mail?

(Passing letter to witness for examination.)

A. Yes, sir.

Mr. Malone: Mark that for identification as Respondent's Exhibit No. 27.

(Said letter was marked for identification Respondent's Exhibit No. 27.)

Mr. Malone: We offer that as Respondent's Exhibit No. 27.

Mr. Bane: The same objection, Mr. Examiner.

Examiner Sheppard: Let it go in, noting the exception.

(Said letter was received in evidence as Respondent's Exhibit No. 27.)

Q. 28. I hand you now a letter from the same company, the Columbia Mill & Elevator Company, Columbia, Tennessee, dated March 20th, 1928, addressed to W. R. Cornelius & Son, and signed Columbia Mill & Elevator Company in type writing, with the initials of W. A. D. at the side, and ask if you received that in due course of mail, due course of business?

A. Yes, sir.

Mr. Malone: Mark that for identification, please.

(Said letter was marked for identification as Respondent's Exhibit No. 28.)

Mr. Malone: I offer that as Respondent's Exhibit No. 28.

Mr. Bane: The same objection.

Examiner Sheppard: Take the exception. Let the letter be filed.

(Said letter was received in evidence as Respondent's Exhibit No. 28.)

Mr. Bane: I would like also to note a further objection, Mr. Examiner, to all of the exhibits thus far introduced this morning by Respondent in that, no

one of them shows a practice on the part of any mill similar to that charged in the Complaint against the Respondents, because no single letter shows a sale by any mill to another mill.

Mr. Malone: They show demand for flour by mills, or correspondence to purchase.

Mr. Bane: Correspondence about flour but not sales.

Examiner Sheppard: We will now take an adjournment until 2:30 this afternoon, at which time Mr. Cornelius will be on the stand.

(At 12:30 o'clock P. M. the further hearing of this case was adjourned until 2:30 o'clock P. M. this date.)

Docket No. 1601.

Nashville, Tennessee, January 14th, 1930.

Met pursuant to adjournment, at 2:30 o'clock P. M. Before:

William W. Sheppard, Examiner.

Appearances:

Mr. Baldwin B. Bane, For the Commission.

Mr. Thomas H. Malone, Jr., for the Respondents.

ALLEN R. CORNELIUS, was thereupon recalled to the stand, and upon further examination, testified.

Direct Examination continued by Mr. Malone:

Q. 29. Mr. Cornelius, you spoke of a sale to the Freeland Milling Company of Nashville. I hand you what purports to be an invoice showing a sale to the Freeland Milling Company, Nashville, Tennessee, by the Empire Milling Company of Argonia, Kansas, of two hundred fifty barrels "Ever-best" flour, less freight. Can you identify that invoice as one of a sale made by your concern?

A. That is a carbon copy of the invoice.

Mr. Malone: Please mark that as an exhibit for identification.

(Said invoice was marked for identification as Respondent's Exhibit No. 29.)

Mr. Malone: That is offered as Respondent's Exhibit No. 29.

Mr. Bane: Was this a sale made through you?

A. Yes.

Mr. Bane: I object Mr. Examiner on the grounds as the former objections were made on those formerly introduced. I do not object to it on the basis of it being a carbon copy.

Examiner Sheppard: Let it go in, Mr. Reporter, and give the exception.

(Said invoice was received in evidence and marked as Respondent's Exhibit No. 29.)

Q. 30. I had you now an invoice which appears to be a penciled cabon copy of invoice from the Holden Mill & Elevator Company of Holden, Missouri, under date of February 12th, 1929, showing the sale to the Gallatin Milling Company, Gallatin, Tennessee, of five hundred, ninety-eight pound sacks of clear flour, as I read it. Do you identify that as such invoice?

A. Yes, sir.

Mr. Malone: Mark that for identification.

(Said invoice was marked for identification as Respondent's Exhibit No. 30.)

Mr. Malone: I offer that as Respondent's Exhibit No. 30.

Mr. Bane: Do you know who wrote that invoice?

A. It was billed from the office of the Holden Mill & Elevator Company.

Mr. Bane: A carbon copy sent you?

A. That is the copy sent me.

Mr. Bane: The sale was made through you?

A. Yes, sir.

Mr. Bane: The same objections Mr. Examiner as to the other exhibits.

Examiner Sheppard: Let it go in subject to the exception.

(Said invoice was received in evidence as Respondent's Exhibit No. 30.)

Q. 31. You did make that sale as the broker?
A. Yes.
Q. 32. How is that?
A. Yes, sir; we did.

Examiner Sheppard: Mr. Malone, have you got much more of the same line of evidence?

Mr. Malone: Only two other invoices.

Examiner Sheppard: All right, go ahead and introduce them.

Q. 33. I hand you what purports to be a duplicate freight bill dated February 15th, 1929, to the Gallatin Milling Company, a shipper's Order Notify. Please state what that is?
A. That is the Lexington Mill & Elevator Company.
Q. 34. The shipper was the Lexington Mill & Elevator Company?
A. Yes, Lexington, Nebraska.
Q. 35. Do you identify that as a freight bill on a sale made to you?
A. That is a copy of the freight bill supposed to cover the movement of this car, that went to the Gallatin Milling Company on a bill made by me.
Q. 36. To the Gallatin Mills?
A. Yes, to the Gallatin Mills.
Q. 37. Gallatin Mills.

Mr. Malone: Mark that for identification as Respondent's Exhibit No. 31.

(Said letter was marked Respondent's Exhibit No. 31.)

Mr. Malone: I offer that freight bill as Respondent's Exhibit No. 31.

Mr. Bane: Same objection.

Examiner Sheppard: Same action.

(Said freight bill was received in evidence as Respondent's Exhibit No. 31.)

Q. 38. I hand you now a carbon copy of an invoice from the Lexington Mill & Elevator Company to the Gallatin Milling Company, Gallatin, Tennessee, covering three hundred fifty, one hundred forty pound sacks fancy clear flour. I will ask you if you can identify this as an invoice of a sale made through you from the Lexington Mill & Elevator Company to the Gallatin Milling Company?
A. Yes, sir.

Mr. Malone: Mark that for identification.

(Said invoice was marked for identification Respondent's Exhibit No. 32.)

Mr. Malone: That is offered as Respondent's Exhibit No. 32.

Mr. Bane: The same objection, Mr. Examiner.

Examiner Sheppard: I will let it go in subject to exception. Note the exception.

(Said invoice was received in evidence as Respondent's Exhibit No. 32.)

Q. 39. That invoice bears date November 17th, 1928, does it not?

A. It was shipped 11-17-28, yes.

Q. 40. I hand you now a duplicate carbon copy marked in red ink "Copy," invoice of the Lexington Mill & Elevator Company, Lexington, Nebraska, to the Gallatin Milling Company, Gallatin, Tennessee, for three hundred fifty, one hundred forty pound sacks of fancy clear flour dated February 5th, 1929. Can you identify that as invoice of a sale made through you as broker, between those parties?

A. Yes.

Mr. Malone: Mark that for identification, please.

(Said invoice was marked for identification Respondent's Exhibit No. 33.)

Mr. Malone: I offer that as Respondent's Exhibit No. 33.

Mr. Bane: Same objection.

Examiner Sheppard: The same exception, the same action.

Mr. Bane: May I ask one question please?

Mr. Malone: Yes.

(Said invoice was received in evidence and marked Respondent's Exhibit No. 33.)

Mr. Bane: Am I to understand when a sale of such character as indicated by these invoices is made by your concern, they ship the flour, bill it and send you a copy of the billing of the invoice, is that correct?

A. Yes, sir.

Q. 41. Do you know whether the Gallatin Milling Company puts out any of this flour under its own brands?

A. Yes.

Q. 42. What do you say about that?

A. They told me they were doing it.

Mr. Bane: Objected to Mr. Examiner, as hearsay.

Examiner Sheppard: That is hearsay testimony, Mr. Malone.

Mr. Malone: Of course that is hearsay, but it shows what the broker knows about dealing with his customer.

Mr. Bane: He does not know anything. He only knows what they told him, which is nothing as to actual knowledge.

Examiner Sheppard: The best proof would be the man himself. I do not want to put you to the trouble to bring him here.

Mr. Malone: Oh no. I thought we had reached a conclusion as to that, Mr. Examiner.

Examiner Sheppard: I want you to recognize the fact that I recognized it is hearsay, and in an ordinary procedure it would be barred.

Mr. Malone: Why, it would. It occurs to me that the fact that a milling company is buying this large quantity of flour, it would not be to feed the chickens, it could only be for the purpose of resale. However, the question is hearsay, as you say.

Examiner Sheppard: All right.

Mr. Malone: All right, cross-examine him.

Cross-examination by Mr. Bane.

X. 1. Mr. Cornelius, how many of these so-called blenders or mixers in Nashville do you sell flour to?

A. Well,—

X. 2. That is, those scattered around the room here?

A. Off and on, I would say, I have sold all of them.

X. 3. You have sold some to all of them?

A. At different times, yes.

X. 4. You at least attempt to sell them all, don't you?

A. Yes.

X. 5. What size mill is the Gallatin Mill?

A. It has a running capacity in grinding of about two hundred barrels a day, twenty-four hours.

X. 6. A very small mill?

A. Two hundred barrels, there are smaller, but it is not as large as some.

X. 7. It is not a large mill, certainly that is correct, isn't it?

A. It is a good sized mill.

X. 8. Do you call a two hundred barrel mill, per twenty-four hours, a good mill?

A. When you try to sell the output it is not a small mill, and, it is not a large mill.

X. 9. What kind of mill is the Freeland Milling Company?

A. That is a mill having a capacity of about ninety-eight to one hundred barrels a day.

X. 10. Is that here in Nashville?

A. Yes.

X. 11. Operating now?

A. Yes.

X. 12. There are some actual, real milling concerns in Nashville. Generally we thought there were a less number. From this testimony, some of which have said there were only two?

A. Well, the Freeland Milling Company is running whenever they have the wheat. Whenever they get the wheat and when thy have not the wheat, they buy flour.

X. 13. Are they still in operation?

A. They buy flour and run on some time.

Examiner Sheppard: They also buy flour?

A. Yes.

Mr. Bane: That is all, Mr. Examiner.

Examiner Sheppard: Anything else? You are excused.

Witness excused.

MRS. T. L. CUMMINGS, was thereupon produced as a witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Cummings, you reside in Nashville?

A. Yes.

Q. 2. You are the wife of Mr. T. L. Cummings?

A. Yes, sir.

Q. 3. Do you keep house, Mrs. Cummings?

A. Yes.

Q. 4. In keeping house, what flour do you use?

A. I use usually the "Martha White."

Q. 5. How long have you been using that?

A. Oh, for years. I use the "Queen of the Pantry" and the "Gloria" but I prefer the "Martha White."

Q. 6. Are you anything of an expert in the way of a cake maker?

A. Well, I think I make pretty good cakes.

Q. 7. Don't be embarrassed about answering that question?

A. I believe my friends consider me so.

Q. 8. When you buy flour, how do you buy it, Mrs. Cummings?

A. In twelve or twenty-four pound sacks.

Q. 9. And you go to the store and ask for "Martha White" or whatever you want?

A. Yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Who makes the "Martha White" flour, Mrs. Cummings?

A. I don't know.

X. 2. You don't know?

A. No, sir.

X. 3. Have you ever heard of such a thing as the blenders of flours?

A. Yes.

X. 4. Do you know what a blender of flour is?

A. No.

X. 5. Do you know that a blender of flour buys flour from the concerns that grind the wheat into flour, and then buying it from several sources all the way from California to Maryland, and as they usually buy what they call the surplus of the mills, the mills grinding wheat into flour, have it shipped into their place, mix it up, and sack it under their own names and sell it? Do you know that?

A. No, sir; I don't know about that.

X. 6. The testimony in this record is that the so-called blenders of flour that have bought flour from the mills that grind the wheat into flour, and buy what the mills have as a surplus flour, then they bring it to their plants, mix it up, that is, mix the flour from the various sources, and then pack it in bags under their own names, and brands, and then sell it. That is the testimony in the record as to what a blender is.

Mr. Malone: Now, Mr. Examiner, I do not consider that a full statement of the process of blend-

ing flour. It is done by machinery, and is quite an elaborate process.

X. 7. Yes, Mrs. Cummings, they put it into a big hopper in which they have something that stirs it up, call it a spiral, beveled plate, whatever you want, stirs it up, then they sift it and pack it. And then there is another kind of concern which buys wheat and grinds the wheat into flour, packs it, sells it, it comes straight to you in the package that they put it up in. Now, as between those two kinds of concerns, have you any preference as to which kind of flour you would use?

A. I don't know the difference.

X. 8. You don't know the difference?

A. No, sir.

X. 9. Would you think that a flour bought by a concern buying surplus from a mill that actually ground it, anywhere between California and Maryland, and just mixing it up, without making any test to determine the protein content of the flour, the starch content of the flour or the moisture content of the flour, would be as good a flour as you would buy from the concern that actually ground the flour in their plant, after testing the wheat and then in the process of manufacturing the flour, testing it at various times?

A. I just do not know. I usually buy by the name "Martha White," "Queen of the Pantry," "Gloria," or whatever brand I happen to use, although I prefer to use the "Martha White."

X. 10. Have not you any preference as to whether or not you would rather have flour made by a blender as I have described to you or from a concern that actually grinds the wheat into flour?

A. I do not know that I know the difference.

X. 11. Who makes "Queen of the Pantry?"

A. I do not know.

X. 12. Do you know who makes "Gloria" flour?

A. No, sir.

X. 13. You do not know who makes any of them?

A. No.

X. 14. Do you know what name appears on the sacks?

A. Yes.

X. 15. What name?

A. "Martha White," "Gloria," "Queen on the Pantry."

X. 16. Does the name of the manufacturer making the flour appear on the sack or do you know?

A. I just don't know.

Mr. Bane: That is all.

Redirect Examination by Mr. Malone.

RD. 1. You do not pay any attention to that, do you?

A. No, I never have.

RD. 2. You want a good flour.

A. I want a good flour, and the best.

RD. 3. And if Martha White is made by sending all over the country from Maine to California and putting it through that process, why "Martha White" is a good flour?

A. Yes, it is a very good flour.

RD. 4. You know that?

A. I know that. I have used it.

Witness excused.

MRS. W. A. SEIGENTHALER, was thereupon produced as a witness, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Seigenthaler, do you live in Nashville?

A. Yes.

Q. 2. You are married, of course?

A. Yes, sir.

Q. 3. And keep house?

A. Yes.

Q. 4. Of course in keeping house you have to buy flour?

A. Yes.

Q. 5. You cannot get along without that. What flours have you been using?

A. I use "Queen of the Pantry" mostly, but I have used "Gloria" and "Gold Medal."

Q. 6. Have you found "Gloria" a satisfactory flour?

A. I like "Queen of the Pantry" best.

Q. 7. Have you found Gloria satisfactory, also?

A. Yes, I have liked it.

Q. 8. When you buy flour do you ask for it by the name of the brand, "Gloria," "Queen of the Pantry," whatever you want?

A. I pick it up at Hill's. I pick it up myself, get it by the brand.

Mrs. W. A. Seigenthaler Miss Nell Pardue

Mr. Malone: That is all.
Mr. Bane: I thank you.

Witness excused.

MISS NELL PARDUE, was thereupon introduced as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Miss Pardue, you live in Nashville?
A. Yes, sir.
Q. 2. Do you keep house?
A. Yes.
Q. 3. What flours do you use?
A. Well, I have used different brands. I have used "Gloria," I have used "Polly Rich."
Q. 4. Did you find them both satisfactory flours?
A. Yes.
Q. 5. How do you buy flour, by the name of the brand?
A. Yes.

Mr. Malone: That is all.
Mr. Bane: I thank you.
Examiner Sheppard: Miss Pardue, do you know where your Gloria flour is made or manufactured or mixed?

A. Really, I do not know anything about it. I just buy by the brand.

Examiner Sheppard: You buy it in the store, by the brand?

A. Yes.

Examiner Sheppard: You do not know where it comes from?

A. No.

Examiner Sheppard: All right. You are excused.

Witness Excused.

MRS. CHARLES D. JONES, was thereupon introduced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Jones, you live in Nashville?
A. Yes.
Q. 2. And you keep house?
A. Yes.
Q. 3. You use flour of course, in keeping house?
A. Yes, I certainly do. My people all like biscuits.
Q. 4. They are all good Southern people and like biscuits?
A. Yes, they certainly do.
Q. 5. Well, what flours do you use for it?
A. Well, I use different brands. I use "Flora," I have used that, the "Polly Rich," then I have used "Grandma's Wonder" but I prefer "Gloria." I use more "Gloria" than anything else.

Mr. Bane: Did you say "Gloria" or "Flora"?

A. I said "Flora." I have used "Flora" but I prefer the "Gloria," to anything else, to any other brand.
Q. 6. Well, in buying flour you ask for "Gloria," "Polly Rich" or whatever you want?
A. Whatever brand I want, yes.
Q. 7. By the brand?
A. Yes, by the brand.

Mr. Malone: That is all.
Mr. Bane: I thank you, Mrs. Jones.

Witness Excused.

Mr. Malone: Mr. Examiner, you see we have the room full of ladies and I think their testimony is cumulative. They are all along the same line. I will put on just as many as you want on.

Mr. Bane: I think that is up to Mr. Malone.

Examiner Sheppard: I do not want to limit you. You may just put as many on as you wish and let it go at that.

Mr. Malone: I will put some more of them on. I think the testimony is somewhat cumulative.

MRS. W. W. SMITH, was thereupon produced as a witness and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Smith, do you live in Nashville?

A. Yes.

Q. 2. You keep house here?

A. Yes.

Q. 3. What flour do you use in keeping house, or flours do you use, if you use more than one?

A. Well, I have never been very particular of what brand, just so it was a good bleached flour, but I have mostly used "Martha White" and "Queen of the Pantry," "Dauntless."

Q. 4. "Martha White," "Queen of the Pantry" and "Dauntless."

A. Yes, they are all very good flours.

Q. 5. You have found them all very good flours?

A. Yes, sir.

Q. 6. In buying those flours you ask for them by name?

A. I trade at the Cash and Carry Stores. I just help myself to the brand I want.

Q. 7. You just pick up the brand you want?

A. Yes, mostly if it is a good high-class bleached flour, that is all I want.

Q. 8. Do you pay more for "Queen of the Pantry" than you do "Martha White"? Do you remember about the price?

A. I don't remember, no, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. You want your flour to be uniform, don't you?

A. Yes.

X. 2. You want the different brands to be of a uniform quality and grade so that when you buy a second time you know you will get the same thing you bought the time before?

A. I will tell you, I always make such wonderful biscuits out of the three different brands, I cannot tell the difference.

X. 3. But if they were to change, drop down, you could tell the difference. You want them to remain at that level, want them to remain uniform, the same kind of flour. If you go in to buy "Martha White" today you want it to be the same as when you bought on yesterday?

Mrs. W. W. Smith Mrs. E. Hartman Mrs. A. Walden

A. Yes.
X. 4. Yes?
A. Yes, sir.

Mr. Bane: That is all.

Witness Excused.

MRS. ESSIE HARTMAN, was thereupon produced as a witness and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Hartman, you live in Nashville?
A. Yes, sir.
Q. 2. Do you keep house?
A. Yes.
Q. 3. What kind of flour do you use?
A. "Gloria" flour.
Q. 4. Do you find it satisfactory?
A. I certainly do.
Q. 5. How long have you been using it?
A. Well, about five years.
Q. 6. In buying flour do you just ask for Gloria?
A. I ask for "Gloria" and want "Gloria."

Mr. Malone: That is all.
Mr. Bane: I thank you, Mrs. Hartman.

Witness Excused.

MRS. ALTA WALDEN, was thereupon introduced as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Walden, you reside in Nashville?
A. Yes.
Q. 2. Keep house?
A. Yes.
Q. 3. What flour do you use?
A. "Gloria."
Q. 4. Have you found it satisfactory?
A. Yes.
Q. 5. How long have you been using it?
A. Over five years.

Mrs. A. Walden Mrs. J. H. Kestner Mrs. A. H. Prange

Q. 6. How do you buy flour? Just ask for Gloria.
A. I just ask for "Gloria," no, sir; I demand "Gloria."
Q. 7. Well satisfied customers are our best recommendation. You may cross-examine, Mr. Bane.

Mr. Bane: I thank you, Mrs. Walden.

Witness Excused.

MRS. J. H. KESTNER, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Kestner, you live in Nashville?
A. Yes.
Q. 2. Keep house?
A. Yes.
Q. 3. And of course, you use flour?
A. Yes.
Q. 4. What flour do you use?
A. "Gloria," "G-l-o-r-i-a."
Q. 5. Has it been satisfactory to you?
A. Yes.
Q. 6. How long have you been using it?
A. I just could not tell you, but for several years.
Q. 7. In buying flour you just ask for "Gloria"?
A. Yes, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. It is a good flour?
A. Yes, makes as fine fruit cake as you ever put in your mouth.

Mr. Bane: That is all.

Witness Excused.

MRS. A. H. PRANGE, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Mrs. A. H. Prange Mrs. James S. Patrick

Direct Examination by Mr. Malone.

Q. 1. Mrs. Prange, you live in Nashville?
A. Yes.
Q. 2. Keep house?
A. Yes.
Q. 3. What flour do you use in keeping house?
A. I use "Gloria," and only "Gloria."
Q. 4. Have you found it satisfactory?
A. Perfectly.
Q. 5. And you have been using it for some years?
A. About eight years.
Q. 6. In buying flour then, I take it you ask for "Gloria"?
A. Yes, when my groceryman comes I tell him I want "Gloria."

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. It is a very good flour?
A. Yes, sir.

Examiner Sheppard: One question for me. Do you know where this flour is mixed or made?

A. I know it comes from the Nashville Rolling Mills. That is all I know.
Witness Excused.

Mr. Malone: Mr. Examiner, we have, I suppose ten or twelve more of these witnesses, but unless the Examiner wants further proof on that point, personally I am ready to let them go.

Examiner Sheppard: Well now, Mr. Malone, if you think that is sufficient, it is all right with me.

MRS. JAMES S. PATRICK, was thereupon produced as a witness and having first been duly sworn testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mrs. Patrick you live in Nashville?
A. Yes.
Q. 2. Keep house?
A. Yes.
Q. 3. What flour have you been using?
A. "Gloria."

Q. 4. Like these other ladies you have been using "Gloria," have you found it satisfactory?

A. Yes.

Q. 5. How long have you been using it?

A. About five years.

Q. 6. In buying "Gloria" you ask for Gloria by the name?

A. Yes, and quit the groceryman if he doesn't order it for me.

Mr. Malone: All right.

Cross-examination by Mr. Bane.

X. 1. An excellent flour, isn't it, Mrs. Patrick?

A. It certainly is.

Mr. Bane: Stand aside.

Witness Excused.

Mr. Malone: Mr. Examiner, I think this testimony is cumulative after this, so I am going on to something else. You may excuse the other ladies.

J. W. COLVERT, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Colvert, do you live in Nashville?

A. Yes, sir.

Q. 2. What is your occupation?

A. Broker.

Q. 3. Do you sell flour among other things?

A. Yes.

Q. 4. Do you sell to these Nashville self rising flour makers here?

A. Yes.

Q. 5. Have you sold any flour to grinding mills?

A. Yes.

Mr. Bane: Objected to, Mr. Examiner, as incompetent, irrelevant and immaterial.

Examiner Sheppard: Let it go in on the same ruling.

Q. 6. Mills that compete with the Nashville self rising flour makers or blenders?

Mr. Bane: If he knows.

A. Yes.

Mr. Malone: Do you know whether any of these mills buying this flour from other mills put it out under their own brands.

Mr. Bane: That is objected to, Mr. Examiner, as incompetent, irrelevant and immaterial.

Examiner Sheppard: Let him answer under the same ruling.

Mr. Bane: May I have it understood Mr. Examiner, that I have a general objection to all testimony relating to concerns who buy flour, concerns that grind and buy flour instead of making it each time.

Mr. Malone: That is my understanding that you have objection to that line of testimony.

Examiner Sheppard: Yes, you may do so.

Q. 7. How do you know that, Mr. Colvert, that some of these mills put out the flour under their own brands?

A. Well, they have told me that they did. I have been to their plants and seen them blending my flour, and putting it in their sacks.

Q. 8. They told you that it was your flour that they were putting in their sacks?

A. I have seen it, it had my mills' tags on it.

Q. 9. Do any of these mills sell in other states besides Tennessee?

A. Yes.

Q. 10. Name some of the grinding mills to which you have sold flour?

A. The Gallatin Milling Company, Gallatin, Tennessee; The Cedar Hill Rolling Mills, Cedar Hill, Tennessee; The Dixie Mills at Clarksville, Tennessee; Peters & Bradley, at Knoxville, Tennessee.

Q. 11. Have you had any inquiry from a grinding mill outside of this State for flour as late as December, 1929, and I refer to the Highland Milling Company?

A. Yes.

Q. 12. Where is that Milling Company?

A. Highland, Illinois.

Q. 13. Was that a call by telephone or how?

A. As I recall, the last time or two that they asked for flour was by telephone.

Q. 14. What do you know about two grinding mills substituting on an order that you placed for Mr. Tupper?

A. Well, I had the manager for one of the mills in question to tell me that he had filled a certain number of cars of flour, for Mr. Tupper, at the order of another mill that told him that they had the flour sold to Mr. Tupper.

Q. 15. Well, what I had in mind was this, did the mill that had the flour sold to Mr. Tupper, put out the flour from the other mill under the brand of this first mill?

A. Yes.

Q. 16. And filled Mr. Tupper's order in that way?

A. That is how it was told to me.

Q. 17. What two mills were those?

A. The mill buying the flour was the Howse Milling Company of Howse, Nebraska, and the one milling the flour as the Minnatree Mills of Scribner, Nebraska.

Mr. Bane: Mr. Tupper is the one identified with the Nashville Roller Mills?

Q. 18. When I say or speak of Mr. Tupper, I mean the manager of the Nashville Roller Mills, Nashville, Tennessee. You understand that?

A. That is understood, yes.

Q. 19. What is the size of this Howse Mill?

A. It is credited with five hundred barrel capacity, daily.

Q. 20. Do you know that one mill had actually substituted flour made by another at the time the order was filled.

A. No, sir.

Q. 21. You found it out afterwards?

A. Yes, sir.

Q. 22. Did you, at my request, get together several invoices showing sales to grinding mills where you had acted as broker?

A. Yes, sir.

Mr. Malone: Please mark these as Exhibits, for identification.

(Said papers were then marked for identification, Respondent's exhibits Nos. 34 to 50, both inclusive.)

Q. 23. Examine the papers now handed you, marked for identification as Respondent's Exhibits Nos. 34 to 50, inclusive, and state whether these are invoices of sales made by you, from one mill to another as therein shown?

(Passing papers to witness for examination.)

Mr. Malone: We offer them as Respondent's Exhibits Nos. 34 to 50 both inclusive.

Mr. Bane: The same objection, Mr. Examiner as made this morning to exhibits introduced through Mr. Cornelius.

Examiner Sheppard: Let them go in, Mr. Reporter, and give the exception.

(Said papers were received in evidence as Respondent's Exhibit Nos. 34 to 50 inclusive.)

Q. 24. With respect to Exhibit No. 35, is there anything that indicates to you on that exhibit that the Mill Purchasing sent on its own sack to the Mill furnishing the flour, to be filled by that mill?

A. Yes, sir; a charge down here on this invoice of $7.28 with the explanation of the charge which would indicate that being the amount of express charges on account of sacks sent from the Demis Bag Company at Memphis to the Consignor.

Q. 25. What is the Demis Bag Company of Memphis?

A. It is a concern that makes, among other kinds of bags, a patent flour sack for flour.

Q. 26. So that invoice indicates that the buyer there, the Dixie Mills of Clarksville, had its bag maker send on the sacks direct to the Wells-Abbott-Nieman Company, Incorporated, of Schuyler, Nebraska, to be packed by them?

A. Yes.

Q. 27. Now Exhibits 42, 43 44, 45, 46, 47, and 48, do not appear to show the name of the consignor or mill furnishing the flour. Con you tell in each case what that mill was?

A. Yes, sir; in every case I can tell the mill that shipped the flour, from the brand.

Q. 28. Well, what was the mill in that case?

A. The Highland Milling Company.

Q. 29. Where is that?

A. Highland, Illinois.

Q. 30. And you know that from the brand of flour shipped in each case?

A. Yes.

Q. 31. I hand you now three letters from the Columbia Mill & Elevator Company to J. W. Colvert & Company of Nashville; one dated September 17th, 1928, the other September 26th, 1928, and the third February 28th, 1929. I will ask that these be marked for identification?

(Said letters were thereupon marked for Identification as Respondent's Exhibits 51, 52 and 53.)

Q. 32. Please say if you can identify those as letters received by you in due course of mail, or in due course of business?

A. Yes, sir; each of them.

Mr. Malone: I offer them as Respondent's Exhibits Nos. 51, 52, and 53.

Mr. Bane: I object to them, Mr. Examiner, on the same ground upon which objection was made to exhibits introduced through Mr. Cornelius this morning, and upon the further ground that no one of the letters is signed by any person. It is merely typed in, the name of the Columbia Mill & Elevator Company. The letters are not properly authenticated or proven in any way.

Examiner Sheppard: Let them go in under the former ruling and give an exception.

(Said letters were received in evidence as Respondent's Exhibits Nos. 51, 52 and 53.)

Q. 33. What do you know if anything about grinding mills selling flour to blenders right around cost?

Mr. Bane: Objected to, Mr. Examiner. This man, a broker, he cannot say, at least I cannot see, and certainly from what has been testified to before, he is in no way qualified, no foundation has been laid whatsoever to show he knows anything whatsoever about the cost of flour. Certainly he would not know the cost of flour to mills which, as he has testified, are in various sections of the country.

Examiner Sheppard: I did not get the exact significance of the question.

Mr. Malone: I was going to ask if he knows personally from contact with mill owners that they do sell these flour blenders at cost, right around cost, in order to keep the mills running for twenty-four hours, and reduce their overhead; if he knows that personally from conversations with mill owners.

Q. 34. Now—

Mr. Bane: From that standpoint, Mr. Examiner, it will be the purest form of hearsay. The way to prove that, is to call some mill owner who does do it, and not prove it by somebody who the mill owner has

told that. Very likely the mill owner when called, has gotten the broker to sell his flour, and wants to get as good as possible, and it is quite possible that he has told the broker that he could not sell at that price as that is what his cost was. He wants to boost the man up and get a high price. It is the clearest kind of hearsay and the very type of evidence that would be the most unreliable.

Mr. Malone: I submit, Mr. Examiner, it comes within the test of what would influence a fair minded man, that is the test laid down by the Courts and Commission.

Mr. Bane: I do not see how it comes within any such test as that.

Examiner Sheppard: It is very bad hearsay, no doubt about that, Mr. Malone, and it is not the best evidence. The best evidence being the mill owner himself.

Mr. Malone: Of course we have introduced some mill owners as you will recall.

Mr. Bane: None of the mill owners introduced have given any testimony as that.

Mr. Malone: I differ with you.

Examiner Sheppard: You mean mill owners?

Mr. Malone: Yes, we broke in on Mr. Bane's evidence, at the former hearing. If you remember, the Southeastern Millers Association was having a meeting here, and we have three or four witnesses whose testimony goes to that point, as I recall it.

Examiner Sheppard: Did you go into that at that time?

Mr. Malone: Oh yes.

Examiner Sheppard: And that record is in the record already?

Mr. Malone: Yes.

Examiner Sheppard: That being the case, I think we had better restrict this man, as not being the best evidence. I, of course, prefer the best evidence when we can get it, and as it is already in, I do not see that this gentleman's testimony could add anything to that.

Mr. Malone: That was merely cumulative, in any event.

Examiner Sheppard: Yes, I am glad you called my attention to it. I had forgotten about it.

Mr. Malone: All right, cross-examine.

Cross-examination by Mr. Bane.

X. 1. What sized mill is the Gallatin Milling Company?

A. I understand the grinding plant is two hundred barrels daily.

X. 2. Is that a small mill or a large mill?

A. Well, it depends on the section of the country. It is a fair sized mill for this section of the country.

X. 3. What about the Cedar Hill Milling Company, where is that located?

A. Cedar Hill, Tennessee.

X. 4. Is that a large mill or small mill?

A. That is a rather small mill, about one hundred barrels capacity.

X. 5. When you refer to capacity, you refer always to a twenty-four hour run?

A. Yes.

X. 6. Where is the Dixie Milling Company?

A. Clarksville.

X. 7. What sized milling concern is that?

A. I am not sure, but I am under the impression it is about one hundred fifty barrel mill.

X. 8. The Peters & Bradley Milling Company of Knoxville, Tennessee, what size is that?

A. A two hundred barrel mill.

X. 9. Two hundred barrels a day?

A. Yes.

Mr. Bane: That is all, Mr. Examiner.

Witness Excused.

W. T. BAIRD, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Baird, you live in Nashville?

A. Yes.

Q. 2. What is your occupation?

A. Flour and Feed Broker.

Q. 3. Do you sell flour to these Nashville Blenders?

A. Yes.

Q. 4. What do you know about grinding mills buying flour from other grinding mills? Have you sold any flour to other grinding mills?

A. Yes.

Q. 5. What do you know about the buying mills putting this flour out under their own brands?

A. I know very little about that, Mr. Malone. I am not qualified to say what they do with it. I have sold more or less to grinding mills, though.

Q. 6. You know they buy considerable amounts?

A. Yes, sir.

Q. 7. Do you know of anything else they could do with it, except sell it?

A. No, sir.

Q. 8. I will ask you whether, at my request you got together some papers on this subject?

A. Yes, sir.

Mr. Bane: It is understood I have an objection to this whole line of testimony of Mr. Baird as well as Mr. Colvert.

Mr. Malone: Yes, that is understood.

Examiner Sheppard: Yes.

Q. 9. I hand you a letter from the City Milling Company, Newport, Tennessee, addressed to Baird Brokerage Company, and I pause to ask is the Baird Brokerage Company your concern?

A. Yes, sir.

Q. 10. Under date of January 25th, 1929, and also several invoices showing sales to various mills, and I will ask you if you can identify this as a letter received by you in due course of mail, and in due course of business, and these as invoices representing sales made by you or your firm as flour brokers?

(Passing papers to witness for examination.)

A. Yes, sir.

Mr. Malone: Please mark them as Exhibits for identification.

(Said papers were marked for identification as Respondent's exhibits Nos. 54 to 66, both inclusive).

Mr. Malone: I offer these as Respondent's Exhibits Nos. 54 to 66 both inclusive, Mr. Examiner.

Mr. Bane: I object, Mr. Examiner, upon the same basis as to those introduced this morning, through Mr. Cornelius.

Examiner Sheppard: Let them go in with the

same ruling and with exception noted.

(Said papers were received in evidence as Respondent's Exhibits Nos. 54 to 66, both inclusive.)

Q. 11. Is the City Milling Company of Newport a grinding mill, Mr. Baird?

A. I am under the impression it is, Mr. Malone. That letter is in answer to a letter I wrote them. We have never sold them any flour, and I am not prepared to say other than on the literature. I believe they are asking there for prices on flour, aren't they? I am qualified to say about the invoices that I sold.

Q. 12. You do not know of your own knowledge whether that is a grinding mill or not?

A. No, nothing other than the contents of that letter.

Q. 13. What about the Bell-Downing Mills, Incorporated of Springfield, Tennessee?

A. They are grinding mills.

Q. 14. Do they sell in states other than Tennessee?

A. I really do not know where they sell. I know they sell flour.

Q. 15. They sell in competition with these Nashville blenders?

A. Yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Can you tell us, Mr. Baird, please sir, what the size of this Bell-Dowling Mills, Incorporated is?

A. It is a very small mill.

X. 2. By that you mean about what daily capacity?

A. I imagine they have in the neighborhood of about one hundred barrels a day. I do not know the exact size.

X. 3. Somewhere around one hundred barrels a day?

A. That is my idea.

X. 4. That is your idea?

A. Yes, sir.

Mr. Bane: That is all, Mr. Examiner.

Witness Excused.

J. F. KRIEG, was thereupon introduced as a witness and having been duly sworn, testified as follows:

J. F. Krieg

Direct Examination by Mr. Malone.

Q. 1. This is Mr. John F. Krieg?
A. Yes, sir.
Q. Where do you live, Mr. Krieg?
A. Nashville.
Q. 3. What is your present occupation?
A. Flour & Grain Broker.
Q. 4. Were you formerly connected with the Liberty Mills of Nashville?
A. Yes, I was Secretary-Treasurer, and wheat buyer.
Q. 5. For how many years were you with them?
A. I was out there about thirty years altogether. I was in the office about twenty.
Q. 6. You were an officer about twenty years?
A. Yes.
Q. 7. The Liberty Mills is located in Nashville, Tennessee?
A. Yes, sir.
Q. 8. And it is a wheat grinding concern?
A. Yes.
Q. 9. Of what capacity?
A. Four thousand barrels.
Q. 10. On a twenty-four hour run?
A. Yes, sir.
Q. 11. Mr. Krieg, while you were with the Liberty Mills, did that concern, to your knowledge, buy any flour from other Mills and put it out under its own brands?
A. At times it did, yes.
Q. 12. How long since you left the Liberty Mills?
A. A little over five years ago.
Q. 13. So during the time you were with them as an employee and afterwards as an official for twenty years, that was their practice at times to buy flour from other mills, and put it out under their own brands and in their own bags?
A. Yes.
Q. 14. Now Mr. Krieg—

Mr. Bane: May I have an objection to this line of testimony as to the other flour?

Examiner Shepard: Yes, note the objection. Let it be overruled for the same reasons as were put in this morning.

Q. 15. The Liberty Mills sells all through this southeast territory, does it not?
A. Yes.

Q. 16. And did at the time you were with them?

A. Yes.

Q. 17. And did when they were buying this flour from other mills and putting it out?

A. Yes.

Q. 18. What do you know about the Liberty Mills selling to these Nashville blenders, or some of them, at or about cost?

Mr. Bane: Objected to Mr. Examiner, unless proper basis is laid. This man as Secretary and Treasurer and wheat buyer does not give him any knowledge as to what it cost the Liberty Mills to produce the flour.

Q. 19. Did that fall within your knowledge, did you know that?

A. I figured up all the costs in the office.

Examiner Sheppard: If you know I will let you testify about it.

Q. 20. Well, what about it?

A. Well, at times we sold the blenders here thirty to forty thousand barrels a month at certain periods off and on, for a great many years.

Q. 21. And did you sell that flour at times at or about cost?

A. Most of the time at cost, and sometimes at less.

Q. 22. Now how did you figure you could do that, Mr. Krieg?

A. Well, we had a very large capacity, four thousand barrels a day. In our effort to run twenty-four hours a day, and to distribute the cost per barrel, we had to take business at a loss at times on a certain per cent of our output.

Q. 23. Now when you ran twenty-four hours, are your fixed charges, such as taxes, increased, in any way?

A. No.

Q. 24. Your insurance?

A. No.

Q. 25. Or the interest on your loans, if you have any?

A. If you run full time?

Q. 26. Yes?

A. Of course if you are running full time your interest will be more because you are doing more business, but your taxes would not be any more.

J. F. Krieg

Q. 27. What I am getting at, your fixed charges, your fixed charges are practically the same, are they not?

A. Practically the same, yes.

Q. 28. On a twelve hour basis, or a twenty-four hour basis?

A. Very little difference.

Q. 29. The additional element in there would be the labor cost, perhaps?

A. And more fuel.

Q. 30. A little item for fuel?

A. Yes.

Q. 31. Are those the important items, labor and fuel?

A. The more important.

Q. 32. And those are the only items that would be in any way, increased?

A. Well, there would be labor, fuel, oil, of course.

Q. 33. Suppose you were operating, suppose it cost you a thousand dollars to operate twenty-four hours. What would you estimate in round figures it would cost you to run twelve hours?

A. You could not get out with less than eight or nine hundred dollars per day, as compared with a thousand dollars for full time. There is very little difference.

Br. Bane: You mean there would not be but about one hundred dollars difference, including the extra labor costs if you worked the men for twenty-four hours instead of twelve?

A. You have to keep a lot of the men on, the head miller, the second miller, it is just the cheaper labor that you eliminate.

Mr. Bane: It seems so unusual to me, when you work men double time on a thousand dollars.

A. You do not eliminate much when you shut down.

Mr. Bane: What would be in round figures the cost per barrel in running two thousand barrels per day and the cost is running four thousand barrels a day?

A. Well, you could run four thousand barrels—when I was there at about forty or fifty cents per barrel.

Q. 34. And on the other?

A. And then you cut down to two thousand barrel run, it will go up as high as seventy-five to eighty cents.

Mr. Malone: Cross-examine him.

J. F. Krieg

Cross-examination by Mr. Bane.

X. 1. When were you Secretary-Treasurer of the Company, Mr. Krieg, the Liberty Mills?

A. From 1910 to 19—let me see, I was Secretary up to 1924, that is the time I left there.

X. 2. You were Secretary up to 1924, when you left?

A. Yes.

X. 3. When did you become Secretary?

A. About 1900.

X. 4. All right. You were Treasurer up until what time?

A. Secretary and Treasurer at the same time, both offices.

X. 5. During what period were you wheat buyer?

A. Practically the same time, it was one of my duties to buy the wheat.

X. 6. As Secretary-Treasurer?

A. Yes.

X. 7. You left in 1924?

A. Yes.

X. 8. You have not been connected with them since?

A. No, sir.

X. 9. In which one of those capacities was it your duty to figure the costs of the Liberty Mills?

A. As Secretary-Treasurer, that came under my jurisdiction.

X. 10. Now when you figured the costs what did you include to make up your cost Mr. Krieg?

A. Administration, taxes.

X. 11. All right?

A. Insurance, labor, advertising, fuel, oil.

X. 12. Fuel, you mean coal?

A. Fuel, coal.

X. 13. And your oil?

A. The oil for greasing things, you know; repairs, depreciation, and numerous other things that came in under miscellaneous.

X. 14. Well, did not you add also the cost of the wheat?

A. Sure, the cost of the wheat.

X. 15. The cost of the wheat?

A. That was a separate item, but always charged.

X. 16. That is one element included to make up the cost?

A. Yes.

X. 17. You included also sales costs?

A. The sales costs.

J. F. Krieg

X. 18. You added that in figuring the cost, you added the sales costs?

A. Yes.

X. 19. And then did not you add, or did you include in the administration the cost to cover what we generally term overhead expense, such as salaries of officers, et cetera?

A. That is what administration was, yes, sir.

X. 20. That was what you included under administration?

A. Yes.

X. 21. Did you add anything for obsolescence?

A. That was covered in depreciation.

X. 22. Other than what you covered in depreciation?

A. No, sir.

X. 23. Then there were various other—you said there were various other miscellaneous things in addition to those you have enumerated, there were other costs?

A. There were elements that I cannot remember just now, but I remember there was an item of miscellaneous that amounted to something.

X. 24. That amounted to something, which you added?

A. Yes.

X. 25. Those were elements you added to the figure making up the costs of operating the Liberty Mills?

A. Yes.

X. 26. In addition there is one other item which might be referred to that you added in to make up the cost, advertising expense?

A. I mentioned that.

X. 27. Labor is one, or is it one of the biggest elements of cost?

A. It is one of the largest, yes.

X. 28. One of the largest elements of cost?

A. Yes.

X. 29. How many salesmen did the Liberty Mills have?

A. We have twenty-five at one time.

X. 30. Twenty-five?

A. It ran from fifteen to twenty-five.

X. 31. They traveled on the road?

A. Yes.

X. 32. How did you pay them, by salary and commission, or some paid one way some the other?

A. We paid by salary.

X. 33. By salary?

A. Yes.

X. 34. Of course their salary and expenses were charged in in figuring as costs?

A. Yes.

Mr. Bane: That is all, Mr. Examiner.

Witness Excused.

CONN WILLIAMS, was thereupon introduced as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Williams, you live in Nashville?

A. Yes.

Q. 2. What is your business?

A. Brokerage business.

Q. 3. Do you sell flour as a broker?

A. Yes.

Q. 4. Have you ever sold any flour to grinding mills?

A. Yes.

Mr. Bane: May I have an objection to this form of testimony of Mr. Williams, the same as the other witnesses.

Examiner Sheppard: Yes, note the exception.

Q. 5. Do you know what they do with it?

A. No, sir; I don't know definitely.

Q. 6. Do you know anything else they could do with it besides sell it?

A. No, I do not know that I do.

Q. 7. Without going into details, because we have already had a lot of testimony along the same line, would the amount of your sales approximately twenty thousand barrels within the last six months?

Mr. Bane: Do you mean the amount of his sales generally, to everybody?

Mr. Malone: No, I am talking about to grinding mills, flour to grinding mills.

Mr. Bane: The same exception to his testimony.

Examiner Sheppard: If you know that I will let you answer that.

A. If I know definitely.

Conn Williams

Examiner Sheppard: Yes, if you know about it.

A. Well, of course I don't know definitely the amount, it has run something around that.

Q. 8. The sales of flour to grinding mills?

A. Yes.

Q. 9. And you do not know anything that these mills could do with that flour, that large amount of flour except to put it out and sell it under their own brands?

A. No, sir.

Q. 10. Do any of these millls sell in other states, that you have been talking about?

A. You mean the mills that I sell to?

Q. 11. Yes?

A. Well, that I could not answer definitely, Judge, because I do not know that much about their business.

Q. 12. You do not know that definitely?

A. No, sir; I don't know definitely.

Q. 13. Do any of them compete with these Nashville blenders?

A. Well, I would say they did, because they are in Tennessee and the blenders sell in Tennessee. I would take it that they do.

Q. 14. They are in this same territory, in this same territory?

A. Yes, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. One question I would like to ask? I do not think any of the testimony is relevant or material, but I did not quite understand whether Mr. Williams said that he had sold in the last six months approximately twenty thousand barrels of flour to, not for, but to mills that grind wheat into flour. I just want to know whether I understood you correctly?

A. Well, as I say, probably in that neighborhood. I could not tell exactly how much, it might be a little less and might be a little more.

Mr. Bane: All right, that is all.

Witness Excused.

Mr. Malone: That exhausts our witnesses today.

Examiner Sheppard: We will adjourn until ten in the morning.

Conn Williams D. T. Odom

(At 4:00 o'clock P. M. the hearing was thereupon adjourned until ten o'clock A. M. January 15th, 1930.)

Docket No. 1601.

Nashville, Tennessee, January 15th, 1930.

Met pursuant to adjournment at 10:00 o'clock A. M. Before:
William W. Sheppard, Examiner.

Appearances:
Mr. Baldwin B. Bane, for the Commission.
Mr. Thomas H. Malone, Jr., for the Respondents.

D. T. ODOM, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Odom, where do you live?
A. In Springfield, South Carolina, Orangeburg County.
Q. 2. What is your occupation?
A. I merchandise and farm.
Q. 3. You are a retail merchant?
A. Yes.
Q. 4. In your business do you handle flour?
A. Yes.
Q. 5. Plain or self rising or both?
A. Self rising.
Q. 6. Self rising only?
A. Yes.
Q. 7. Have you handled any self rising flour made by any Nashville concern?
A. Yes.
Q. 8. What is that?
A. From the Watauga Milling Company, known as the brand, as "Dixie Maid."
Q. 9. Dixie Maid, made by the Watauga Milling Company?
A. Yes.
Q. 10. Has that been a satisfactory flour to you and your trade, Mr. Odom?
A. Yes.

D. T. Odom

Q. 11. Entirely so?

A. Entirely satisfactory, yes, sir. I have sold it under a guarantee and no complaints whatsoever, no, sir.

Q. 12. You have sold it under a guarantee without complaint?

A. No, sir; no complaints, none at all.

Q. 13. Did you understand that Mr. McCarthy did not grind his flour?

A. No, sir; I had no understanding about the matter about the making of it or the process of making it at all.

Q. 14. It did not interest you?

A. Not a bit at all. I just bought his flour at a reasonable price and a satisfactory piece of goods.

Q. 15. And it made no difference to you whether it was made by a blender or by a grinder, or who made it?

A. No, sir; not at all. I did not investigate how it was made, anything about it at all.

Q. 16. Did the word "Mills" or "Milling Company," did the use of those words, have anything to do with your purchasing flour?

A. No, sir; not with me it don't.

Q. 17. What influences you in buying flour?

A. Well, I just bought this flour, I try to get a flour at a reasonable price, something I can sell, and guarantee the piece of goods, something that will give satisfaction to the trade.

Q. 18. A guaranteed piece of goods at a reasonable price?

A. At a reasonable price, yes.

Q. 19. And a piece of goods you can guarantee at a reasonable price?

A. Yes, that will give satisfaction.

Q. 20. And you found the Dixie Maid brand, self rising flour to be that class of goods?

A. Yes, I found it to be that way, ever since I have been handling it. I have handled it four years and I have not had a bit of kick on it at all.

Q. 21. Have you used it yourself?

A. Yes, sir; I use it myself.

Mr. Malone: All right, cross-examine him.

Cross-examination by Mr. Bane.

X. 1. What sized town is Springfield, Mr. Odom?

A. It is about between six and eight hundred.

X. 2. Six and eight hundred?

A. Yes.

X. 3. You sell in the town?

A. Yes.

X. 4. Do you have a country trade also?

A. Yes, in the town and in the country, yes, around there.

X. 5. Are you the largest retail merchant in the town?

A. No, say just a small merchant.

X. 6. You are about the smallest retail merchant in town?

A. Well, I am a small merchant, but not the smallest. Some of them are smaller that I am.

X. 7. What percent of your trade is darky trade?

A. I guess about forty percent.

X. 8. You think half of it is darky trade?

A. No, sir; not half of it, I don't suppose, No.

X. 9. What other flour do you handle besides the flour from the Watauga Milling Company?

A. I did handle at one time from the Albemarle Milling Company, from Albemarle, North Carolina, but I quit handling that flour.

X. 10. You are handling the Watauga Milling Company's flour now?

A. Yes.

X. 11. And have been for the last two years?

A. Yes, sir.

X. 12. How long have you been in the retail merchandising business?

A. In Springfield, two years.

X. 13. Where were you in business before?

A. Well, I have been several years since I was in business before.

X. 14. How long since you have been in business before?

A. Possibly about ten or twelve years.

X. 15. You were in what kind of business at that time?

A. In the grocery business.

X. 16. Where?

A. At Augusta, across in Aiken County.

X. 17. In Augusta, Georgia?

A. No, sir; in South Carolina, but in Aiken County, just across the river from Augusta.

X. 18. In Aiken County, South Carolina, just across the river from Augusta, Georgia?

A. Yes.

X. 19. What does the words "Mills" or "Milling Company," Mr. Odom, when used in the name of a con-

cern selling flour indicate or mean to you as to the character of that concern?

A. Well, I don't know. Take this flour, I bought that way.

X. 20. Suppose I came in to you and said to you, just answer my question as to what it indicates to you, suppose I came in to you and told you I was selling flour, and told you I was representing the Eureka Mills, or the Sunnyside Milling Company. What character of concern would that indicate to you I was selling flour for?

A. Well, I don't know just which it would be, it would not interest me, I should not think.

X. 21. Well, just answer my question, what it would indicate to you?

A. I don't know that it would indicate anything.

X. 22. Would not that indicate to you that I was representing a concern grinding wheat and making flour, that I was trying to sell you?

A. Yes.

X. 23. Would not it?

A. Yes, I guess so.

X. 24. It certainly would, wouldn't it?

A. Yes.

X. 25. Just what the words mean, the Eureka Milling Company, or Eureka Mills?

A. Yes.

Mr. Bane: That is all.

Redirect Examination by Mr. Malone.

RD. 1. Would it make any difference to you whether he ground his flour or whether he blended it, if the flour was satisfactory and the price was right on it?

A. Oh, no, sir; it would not make any difference to me, whether it was ground or blended.

RD. 2. You would not buy it with that in view at all?

A. No, sir; I would not buy it on the ground as to whether it was a ground or blended flour, no, sir.

RD. 3. That would not cut any figure?

A. No, sir; not a bit whatever.

RD. 4. Mr. Odom, you spoke about another flour that you started to handling. How did that compare in price with the "Dixie Maid"?

A. That was high and I quit it. That was a higher priced flour. I bought this flour and when I purchased this flour they said they could supply me with a mighty good flour, a flour that would give me the very best re-

sults. I tried it and found that it would give me the same results. And then this other flour that I was selling from the Albemarle Milling Company cost me more and of course I had to sell it for more. When I got this other flour and put it on the market and began selling it, the people began buying and they said it was good, they tried both, and I sold the "Dixie Maid" but could not sell the Albemarle flour because I had to get ten cents a sack more.

RD. 5. Let me understand, you started buying this flour from the Albemarle Mills?

A. Yes, sir.

RD. 6. Which cost you more and you had to sell it for ten cents a sack more?

A. Yes, sir.

RD. 7. And you put in the "Dixie Maid" which cost you less?

A. Yes.

RD. 8. And which you could sell for ten cents a sack less?

A. Yes.

RD. 9. And the "Dixie Maid" was so much more satisfactory that you discontinued the Albemarle Milling Company's flour?

Mr. Bane: Just a moment. Of course that is leading. I did not object to it because being leading, when it is Mr. Malone's summary. If he wants to summarize the testimony that is all right, but I am going to insist that he summarize the testimony correctly. The witness did not say it was more satisfactory, he said it was just as good.

RD. 10. Let me ask you there was the "Dixie Maid" more satisfactory to the trade than the "Premium Four"?

A. To the trade, yes, on account of price and quality.

RD. 11. On account of price and quality?

A. Yes.

RD. 12. So you were sort of left with the "Premium Four" on your hands?

A. I was, until I had to reduce my price to sell it, to keep it from being on there so long that it might get ruined. I reduced the price to get rid of it.

RD. 13. You reduced the price to the same as the "Dixie Maid"?

A. Yes, sir.

RD. 14. You reduced it to the same price as the "Dixie Maid"?

A. Yes, sir.

RD. 15. And then you sold it at that price?

A. Yes, I sold it, but I was not making anything off of it.

RD. 16. But the "Dixie Maid" was sold at a profit?

A. Well, I retail it at a dollar a sack and I make as much profit off of it as selling the other at $1.10.

Examiner Sheppard: Mr. Odom, did you know that the Watauga Milling Company, when you bought this flour, was known as a mixer or a blender?

A. No, sir.

Examiner Sheppard: You did not know that?

A. No, sir; I did not.

Examiner Sheppard: You did not know whether he was a mixer or a blender, or whether he ground the grain into flour?

A. No, sir.

Examiner Sheppard: You did not know what he was?

A. No, sir; I didn't know at all.

Examiner Sheppard: All right, much obliged.

Witness Excused.

H. M. CASSELS, was thereupon produced as a witness, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you live, Mr. Cassels?

A. Ellinton, South Carolina.

Q. 2. What is your business, Mr. Cassels?

A. I work in the Wholesale Grocery Business and Retail, jobbers and retail.

Q. 3. Do you handle flour in your business?

A. Yes, I do.

Q. 4. Plain or self rising or both?

A. Both.

H. M. Cassels

Q. 5. Which do you have the most demand for, or is it about fifty-fifty?

A. Why about ninety-nine per cent of self-rising.

Q. 6. Have you handled any flour by a Nashville concern, or put up by a Nashville concern?

A. I have, sir.

Q. 7. What is that?

A. "Sunbeam," is the brand of it, put out by the Watauga Milling Company.

Q. 8. The Watauga Milling Company?

A. Yes.

Q. 9. Has that flour been satisfactory to you and your trade?

A. It has, sir.

Q. 10. Did you know when you were buying that, that it was made by a mill that did not grind wheat?

A. I did, sir.

Q. 11. Does it make any difference to you in buying flour whether the man calls himself a miller, a blender, or what he calls himself?

A. I only consider the grade and the price, the quality and the price.

Q. 12. The quality and the price, and the satisfaction to your trade?

A. Absolutely.

Q. 13. Whether he calls himself a manufacturer, a blender or a miller, cuts no figure with you?

A. Absolutely none whatsoever, if the flour has got the grade, the price is satisfactory, it makes no difference, absolutely.

Q. 14. How do your customers ask for flour, when they come into your store, retail customers?

A. "Boss, give me a sack of good flour, please, sir."

Q. 15. They ask for a sack of good flour. But suppose the more advanced might ask for a certain sack with a picture on it, something of that kind, or roses on it, do they get that far along?

A. No, sir; we don't sell anything but good flour, never sell a second patent over there. It is a very rare case that a man ever asks if that is good flour.

Q. 16. In other words, they are not asking for the mill name, anything like that, they just ask and want a good flour or brand?

A. Just give me a good sack of flour, please sir.

Q. 17. And rely on you to give them a good one?

A. Absolutely.

H. M. Cassels

Q. 18. Have you bought any flour from Ballard & Ballard?

A. I have, sir.

Q. 19. How did you find that ran in price as compared to the flour you get from the Watauga Milling Company?

A. It is a dollar or a dollar and a half a barrel higher.

Q. 20. Are you carrying their flour now?

A. I am.

Q. 21. But that is the price?

A. Right now it is, yes.

Q. 22. And of course, you can sell the Watauga Milling Company's flour at a correspondingly lower price to the consumer?

A. I am doing it now, yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. What sized town is Ellentown, Mr. Cassels?

A. In the incorporated limits, there is about five or six hundred people, then there are two mills around the town, the Lee Banana Case Company from Chicago.

X. 2. What kind of mill?

A. Makes banana cases. They work three or four hundred hands. I also run a commissary there.

X. 3. Just outside of the Corporate limits?

A. Yes.

X. 4. And what about the other mill?

A. I do not run a commissary there, but sell to them.

X. 5. What kind of mill is that?

A. A lumber mill.

X. 6. Altogether you have around you a trade of about what population?

A. I would judge around a thousand, between the town and both mills right in town.

X. 7. Where do you sell wholesale?

A. Why, in Dunbarton, Smellings, all the nearby towns.

X. 8. That is, towns in the same County and right around Ellentown?

A. Yes.

X. 9. A man who asks for a sack of flour, as you described, "Boss, give me a sack of flour"?

A. That is the retail trade.

X. 10. That is the darkies, the darkies would ask, "Boss, give me a sack of flour"?

A. Not always. We have a good many crackers.

X. 11. Do the white men say, "Boss, give me a sack of flour"?

A. He says, "Mr. Mike, give me a sack of good flour."

X. 12. But the "Boss," is usually darkies?

A. Yes, usually the darkies say "Boss, give me a good sack of flour."

X. 13. When did you learn that the Watauga Milling Company did not grind wheat into the flour it sold?

A. About a year or a year and a half ago.

X. 14. How did you learn that?

A. An old fellow who worked for them, Mr. Mulkey, a traveling man told me so, I asked him if he ground, who they were, the first order that I bought.

X. 15. What did he tell you the first order was?

A. He told me they were mixers.

X. 16. They did not grind?

A. He did not say they ground, that they bought up the flour and mixed it.

X. 17. You have only been buying from them about a year?

A. Not that, no, longer than that, I guess two or three years.

X. 18. But about a year ago you learned that they did not grind?

A. Why, I imagine it was a year or perhaps a year and a half ago, sometime, I don't remember exactly when. But, I was under the impression that they did not grind, in fact I knew there were a lot of manufacturers in Nashville that did not grind.

X. 19. Just how did you learn that?

A. Just from general observation, every day business experience, general business experience.

X. 20. Do you come to Nashville?

A. I have been around here some. I have never been in the town, but passed through it, and in Chattanooga. I knew the flour business and all by talking to the traveling man, about the different towns, just absorb that like gee and haw.

X. 21. Do the other representatives of other concerns selling flour call on you?

A. Yes, sir.

Mr. Bane: That is all.

Witness Excused.

G. P. BROWN was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Brown, are you from Las Cassas, Tennessee?

A. Yes.

Q. 2. That is near Murfreesboro?

A. Yes.

Q. 3. In Rutherford County?

A. Yes.

Q. 4. Have you a grinding mill there?

A. Yes.

Q. 5. Small or large?

A. A small mill.

Q. 6. Have you ever bought flour from Mr. McCarthy?

Mr. Bane: Objected to, Mr. Examiner, as incompetent, irrelevant and immaterial.

Mr. Malone: The same line of proof.

Examiner Sheppard: I think this gentleman evidently knows whether he bought the flour or not, let him answer.

Mr. Bane: What difference does it make?

Mr. Malone: We argued that about four times on yesterday.

Examiner Sheppard: Go on and answer the question.

A. Yes, sir.

Q. 7. What did you do with it?

A. I sold it.

Q. 8. Under your own brands?

A. No, under his brands.

Q. 9. You put it out and sold it under his brands?

A. Yes, the "Dixie Maid" and "Diamond Crystal."

Q. 10. Can you buy it from him cheaper than you can make it yourself?

A. Sometimes, yes, I could.

Q. 11. Was that why you were buying from him?

A. Yes, to meet competition, the like of that.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. What sized mill have you got?

A. Fifty barrels.

G. P. Brown J. A. Sloan

X. 2. Fifty barrels?

A. Yes, a small mill.

X. 3. Are you a member of the Southeastern Millers Association?

A. No, sir.

Mr. Bane: All right.

Redirect Examination by Mr. Malone.

RD. 1. You have always been careful about your associates, haven't you?

A. Yes.

Witness Excused.

J. A. SLOAN, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Sloan, you live in Columbia, Tennessee?

A. Yes.

Q. 2. What is your business?

A. Wholesale grocery business.

Q. 3. How many establishments do you have?

A. We have five houses, Columbia is main office, Gallatin, do you want the names?

Q. 4. Yes, give me the names?

A. Fayetteville, Tennessee, Pulaski, Tennessee, Gallatin, Tennessee, Dayton, Tennessee, and of course the Columbia store. That makes five places.

Q. 5. Mr. Sloan, do you buy flour?

A. Yes, we handle flour.

Q. 6. Much or little, is that a considerable item of your business?

A. A considerable item, yes. Just what percentage, I am unable to tell you. We handle so many thousands of different items.

Q. 7. It is a considerable item?

A. A good portion, yes.

Q. 8. Could you approximate about how many barrels per month?

A. Barrels a month, let's see, now you are going some—fifteen hundred to two thousand barrels, I would judge.

Q. 9. Do you buy any flour produced by a Nashville concern?

A. We do, the Nashville Roller Mills.

Q. 10. How long have you been buying flour from the Nashville Roller Mills?

A. Anywhere from seven to ten years.

Q. 11. Have you found that flour satisfactory?

A. Satisfactory, or else I would have long since discontinued it.

Q. 12. Has it been satisfactory to your trade?

A. Yes.

Q. 13. Did you know in buying that flour that you were buying from a so-called blender, not from a grinding mill?

A. I did, yes. I have been over the mill.

Q. 15. Does the fact that a man is a so-called blender or so-called miller influence you in buying flour?

A. Not a bit.

Q. 16. What are the factors that do influence you?

A. In buying flour?

Q. 17. Yes?

A. Service, quality, price and general satisfaction to the trade.

Q. 18. And if you get that, whether a man calls himself so and so milling company, or manufacturer, or a blender, or what he calls himself, cuts no figure at all?

A. Not at all, sir.

Q. 19. What is the total annual volume of your five houses, Mr. Sloan?

A. For all merchandise?

Q. 20. Yes?

A. Around two million.

Q. 21. A year?

A. Yes.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. How close is Columbia to Nashville, Mr. Sloan?

A. Forty-three miles.

X. 2. You come to Nashville pretty often?

A. Pretty often, yes.

X. 3. About how often a month?

A. Once a week, I don't visit the mills that often, however.

X. 4. When did you first go through the plant of the Nashville Roller Mills, here in Nashville?

A. Oh, when we first began doing business with them, seven or eight years ago.

Mr. Bane: That is all, Mr. Examiner.

Redirect Examination by Mr. Malone.

RD. 1. Mr. Sloan, how long have you been in the wholesale grocery business?

A. That is rather embarrassing. I am on my forty-fifth year. Do I look it?

Witness excused.

J. W. LOVINGOOD was thereupon produced as a witness and, having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Your residence is Murphy, North Carolina, Mr. Lovingood?

A. Yes.

Q. 2. What is your business?

A. Retail merchant.

Q. 3. You handle flour?

A. Yes.

Q. 4. What kind, plain, self-rising or both?

A. A little bit of self-rising, mostly just plain flour.

Q. 5. Mostly plain and a small amount of self-rising?

A. Yes.

Q. 6. Do you handle any flour put out by any Nashville concern?

A. Yes, the Watauga Milling Company.

Q. 7. How long have you been handling that flour?

A. I think, sir, since last August a year ago, is about as far as we have handled it.

Q. 8. Has it proved satisfactory?

A. Yes, it is satisfactory, has given very good satisfaction.

Q. 9. To you and your trade?

A. It does.

Q. 10. What influences you in buying flour, Mr. Lovingood?

A. Well, sir, we are after quality and price.

Q. 11. And satisfaction to your trade?

A. Well, of course, the quality gives the satisfaction.

Q. 12. Does it make any difference to you whether it is put up by a so-called blender or a man that grinds the wheat, which puts it out?

A. No, sir; I don't think it does. I don't think it has

anything to do with it, so we get the quality and the price.

Q. 13. Just so you get the quality, the price and satisfaction to your trade, that makes no difference to you?

A. No, sir; it don't.

Q. 14. How do your trade, your customers, ask for flour?

A. Usually if they know the brand of flour they are going to buy they just call for that brand of flour.

Q. 15. Like they call for Arbuckle's Coffee, Octagon Soap, anything like that?

A. Yes.

Q. 16. Did you know when you were dealing with Mr. McCarthy, that he was what is called a blender and not a grinder?

A. Really I didn't know at the time, I didn't when we first began buying. I knew there were blenders in the City, I knew there were some mills here, but I didn't know which he was.

Q. 17. And did not care?

A. Oh, no, it did not make any difference to me.

Q. 18. Because the price was right and the flour satisfactory?

A. Yes, sir.

Mr. Malone: All right, cross-examine him.
Mr. Bane: Stand aside.

Witness excused.

WALTER WALKER was thereupon produced as a witness and, having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Where do you live, Mr. Walker?

A. Andrews, North Carolina.

Q. 2. What part of the State is that in?

A. It is a southwestern county, joining Tennessee line, the county does.

Q. 3. You are a merchant there?

A. Yes.

Q. 4. Wholesale or retail?

A. Retail.

Q. 5. Do you handle flour as a part of your business?

A. Yes.

Q. 6. Plain or self-rising or both?

A. Both of them.

Q. 7. Which do you have the most calls for?

A. I am having more calls right now for plain. I used to have a better trade on self-rising, but not right now.

Q. 8. It varies, sometimes you have more calls for plain and sometimes more for self-rising, is that it?

A. Yes.

Q. 9. Have you been handling any flour made by a Nashville concern?

A. Yes.

Q. 10. What was that?

A. The Watauga Milling Company.

Q. 11. You have been handling some brands from the Watauga Milling Company?

A. Yes.

Q. 12. How long have you been handling that?

A. I think probably six years, maybe seven, right along about six and a half, I guess.

Q. 13. You think six and a half to seven years?

A. Yes.

Q. 14. Has that flour proved satisfactory to you?

A. Yes.

Q. 15. To you and your trade?

A. Yes.

Q. 16. In handling that flour did you know that the Watauga Milling Company was what is called a blender and not a grinder?

A. Yes, I knew that they did not grind.

Q. 17. You knew that they did not grind?

A. Yes.

Q. 18. And that made no difference to you?

A. No, sir.

Q. 19. What influences you in buying flour, what do you try to get?

A. Well, I try to get a flour that will give satisfaction.

Q. 20. At a fair price?

A. Yes, and the price and quality.

Q. 21. Whether it is put out by a so-called blender or so-called grinder, cuts no figure at all in your buying?

A No, sir.

Q. 22. How do your customers ask for flour?

A. Well, the principal flour I am selling now, the brand is "Diamond Crystal."

Q. 23. Well, do they come in and ask for a sack of "Diamond Crystal"?

A. Yes.

Q. 24. Just like they ask for soap, coffee, or anything else by the brand name?

A. Yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Who puts out "Diamond Crystal" flour?

A. The Watauga Milling Company.

X. 2. What sized town is Andrews, North Carolina?

A. Two thousand to twenty-five hundred people.

X. 3. What size store do you operate there?

A. Just a small store.

X. 4. The smallest grocery store in town, isn't it?

A. Oh, no, I don't think it is the smallest.

X. 5. Very nearly the smallest, isn't it?

A. It is not so large.

X. 6. What percentage of trade is darky trade?

A. We don't have any.

X. 7. Don't have any darkies in there?

A. Oh, yes, there are darkies in town, but I do not have their trade.

X. 8. You do not have their trade?

A. No, they usually work at the tannery there, and trade at the Commissary.

X. 9. They trade with the Commissary down there?

A. Yes, in the lower end of town, not up where I am.

X. 10. Andrews is up in the mountains, isn't it?

A. Yes.

X. 11. When did you learn that the Watauga Milling Company did not grind wheat into flour?

A. Right after I began handling it.

X. 12. After you began handling it?

A. Yes.

X. 13. How did you learn it?

A. My father was down to Murphy, and the merchant was talking to him about the flour, trying to get him to handle a flour from Athens, The Athens Roller Mills. He told him that I ought to handle that flour, that these people did not grind the flour, didn't grind the wheat into flour.

X. 14. Did not grind the wheat into flour?

A. Yes.

X. 15. He told you they were mixers or blenders?

A. Yes. Then I asked Mr. Dickey about it when he came around and he told me.

X. 16. Who was Mr. Dickey?

A. He is the salesman for them.

X. 17. Before you learned about this concern, about grinding the wheat into the flour, about them not grinding the wheat into the flour that they sold, what did the word "Mills" when used in the name of the concern selling flour, or the word "milling" when used in the name of a concern selling flour, indicate to you as to the character of that concern?

A. I just supposed they were manufacturing self-rising—self-rising was the first I began handling from them, something like that. I didn't know they were not grinding right at the beginning.

X. 18. You did not know they were not grinding until a short time after you bought?

A. No, sir.

X. 19. Then the word "Mill" or "Milling" when used in the name of a concern, trying to sell you flour, in other words, if I came in and tried to sell you some flour and told you I was representing the Eureka Mills, or the Sunnyside Milling Company, you would have thought I was representing a concern grinding wheat into flour and was selling it, is that right?

A. No, I would not hardly have thought about it being a mill, it did not necessarily mean a mill to be a milling company.

X. 20. Suppose he called himself a "Mill" what would you think he was?

A. A. If he called himself a mill?

X. 21. Suppose I came in to you and said the Eureka Mills, I am representing the Eureka Mills, Mr. Walker, I want to sell you some flour, I have got some good flour, what kind of concern would that indicate to you?

A. It might be that way, but the way Mr. Dickey says—

X. 22. Just answer my question, and we will not get confused.

A. All right.

X. 23. If I came in to you and said I was representing the Eureka Mills and I wanted to sell you some flour, what kind of concern would you think I was representing?

A. That would imply it was a Milling Company.

X. 24. That would imply it was a milling company, by that you mean a concern grinding wheat into flour, that I was selling?

A. It might be.

X. 25. Well, is not that what it would imply?

A. There are so many blenders, and all of them who now use the name of "Mill Company."

X. 26. You would not know what it was?

A. I would hardly know which it was.

X. 27. You would be somewhat confused. You would not know which it was, as there are so many blenders doing that now, you would not know whether it was a blender or a concern grinding wheat into flour?

A. It might be.

X. 28. Is not that right, you would not know which?

A. No, I never thought about it.

X. 29. You would be confused, it is so confused because the blenders are using those words, is not that so?

A. Not after I knew about it.

X. 30. Not after you knew?

A. No, sir.

X. 31. After you knew, you knew there were two characters of concerns using the words, didn't you, after you found out about it?

A. Yes.

X. 32. And you certainly could not tell from the name which character of concern it was, is not that true?

A. Yes.

X. 33. And therefore it is confused?

A. Yes, a Milling Company might imply it is grinding wheat, but it is not—I didn't think that, at that time.

X. 34. Were you through?

A. So a Milling Company might imply it was grinding wheat, but I did not think it that way, no, sir, I didn't.

X. 35. That is because you had learned about it?

A. Learned about it.

X. 36. Before you learned about it?

A. I had not thought about it then.

X. 37. How long have you been in business?

A. About seven years.

X. 38. You have been handling Watauga Milling Company flour all that time?

A. Probably six years, something like that.

X. 39. Now before you learned, you can remember back that far before you learned there were these concerns using the words "Mills" and "Milling Company" in their names that did not grind wheat into flour, what kind of concern did you think they were, what did those terms indicate to you as to the character of the concern?

A. That they were a milling company. I did not think about them being grinders.

X. 40. That they were milling companies?

A. Yes.

X. 41. A milling company is one that grinds the wheat into flour?

A. Manufacturing flour.

X. 42. Manufacturing flour from wheat, didn't it mean?

A. Yes.

Mr. Bane: That is all.

Redirect Examination by Mr. Malone.

RD. 1. To manufacture self-rising flour from flour, you must add salt, phosphate and soda, must not you?

A. Yes.

RD. 2. You say the word mill or milling company is applied generally to blenders, mills, and grinding mills both?

A. Yes.

RD. 3. And you knew that?

A. Yes.

RD. 4. You say that Mr. Dickey the salesman, told you at once that Mr. McCarthy did not grind his wheat, that the Watauga Mills, did not?

A. Yes, he told me when I asked.

RD. 5. Just as soon as you asked?

A. Yes.

RD. 6. And you had already learned that from this other merchant in the way you have already described?

A. Yes.

Mr. Malone: That is all.

Recross-examination by Mr. Bane.

RX. 1. And when you asked Mr. Dickey about it you told him that this other merchant had told you that they did not grind wheat into flour but were merely blenders, and you asked him if that was so, didn't you?

A. The other merchant did not tell me, he told my father.

RX. 2. You said he told your father, and you asked him whether or not it was true?

A. Yes.

Mr. Bane: That is all.

Witness excused.

JAS. H. BRYSON, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Bryson, are you from North Carolina?
A. Yes.
Q. 2. What part of the State?
A. Cherokee County.
Q. 3. What is the town?
A. Marble.
Q. 4. What is your business there?
A. I am a small merchant.
Q. 5. Retail merchant?
A. Retail merchant, yes.
Q. 6. You handle flour?
A. Yes.
Q. 7. Do you handle any flour made by a Nashville concern?
A. Yes, I handle some from the Watauga Milling Company, the Economy Milling Company, both from here.
Q. 8. Has this flour that you got from the Watauga Milling Company been satisfactory?
A. Entirely satisfactory with my trade.
Q. 9. And satisfactory to you and your trade?
A. Yes.
Q. 10. How long have you been handling it?
A. Some five or six years.
Q. 11. Do you know—or did you know, when handling that flour that it was not made by a grinding mill but by a so-called blender?
A. No, sir.
Q. 12. Did that make any difference to you?
A. Not a bit.
Q. 13. What influences you in buying flour?
A. The price and the quality.
Q. 14. And those are the essentials that you consider?
A. Yes.
Q. 15. And you do not care whether it is made by a so-called "Miller" or a so-called "blender"?
A. Not a bit, sir, it has given my trade entire satisfaction and I have been handling it and selling it to them.
Q. 16. How does your trade ask for flour?
A. They come in anw ask for "Diamond Crystal" flour.

Jas. H. Bryson C. D. Ketner

Q. 17. Call for it by the brand name?
A. Yes.
Q. 18. Just like they do other merchandise by the brand?
A. Yes.

Mr. Malone: Cross-examine him.

Cross-examination by Mr. Bane.

X. 1. When did you learn that there was such things in the flour business as blenders?
A. Well sir, I don't know that I ever learned it or not.
X. 2. Did you ever hear of a blender of flour?
A. I don't think I did until after I came down here.
X. 3. Until after you came down here in this case?
A. No, sir.

Mr. Bane: That is all, Mr. Examiner.

Witness excused.

C. D. KETNER, was thereupon produced as a witness, and having been duly sworn, testified:

Direct Examination by Mr. Malone.

Q. 1. You reside in Waynesville, North Carolina, Mr. Ketner?
A. Yes.
Q. 2. What is your business?
A. Meat and groceries, selling meat and groceries.
Q. 3. A retail establishment?
A. Yes.
Q. 4. You handle flour, of course?
A. Yes.
Q. 5. Plain, self-rising or both?
A. Both.
Q. 6. What do you have the most calls for?
A. Well, mostly mine is plain.
Q. 7. Do you handle any flour made here in Nashville?
A. Yes.
Q. 8. What flour is that?
A. The Watauga Milling Company, and I handle some from the Economy Mills Company.

C. D. Ketner

Q. 9. How long have you been handling that flour from the Watauga Milling Company?

A. Something like four years.

Q. 10. Has it proved satisfactory?

A. Yes.

Q. 11. To you and your trade?

A. Yes.

Q. 12. Satisfactory to you and your trade?

A. Yes.

Q. 13. Did you know when handling that flour that the Watauga Milling Company was a blender, what is called a blender?

A. No, sir; I could not say that I did.

Q. 14. It made no difference to you?

A. It never made no difference. I never even give it a thought, that I know of.

Q. 15. What influences you in buying flour?

A. The first thing generally is the price, and then the next thing is a product that will give my trade entire satisfaction and to meet competition. We have got keen competition in our place.

Q. 16. So, you have to get a flour that gives satisfaction to your trade at a price that will meet the competition?

A. Yes.

Q. 17. And when you get that, that is all you want?

A. That is what I stick to.

Q. 18. That is all you think about?

A. Yes.

Q. 19. All you think about in buying flour?

A. Yes.

Q. 20. The man's name cuts no figure with you at all?

A. I don't think so.

Q. 21. It makes no difference what it is called, what he calls himself?

A. No, sir.

Q. 22. How do your customers ask for flour?

A. Well, the biggest part of my customers now is the "Diamond Crystal."

Q. 23. They just come in and ask for a sack of "Diamond Crystal"?

A. Yes, when I get a good man in from the country, and get him to trading with me, when I get a good man, I generally hold his trade.

Q. 24. And you have held his trade on this "Diamond Crystal" right along?

A. Yes, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. What percentage, Mr. Ketner, of your trade is darkey trade?

A. Darkey trade?

X. 2. That is what you call them in North Carolina, isn't it?

A. Yes, about one per cent, I would think.

X. 3. Very small?

A. Yes.

X. 4. What character of concern is the Economy Milling Company?

A. I don't know much about them, just the flour is all I know.

X. 5. Yes. A concern that is grinding wheat into flour, isn't it, the Economy Milling Company?

A. Well, I—

Mr. Malone: Well he said he did not know what it was.

Mr. Bane: Let him answer.

Q. 6. Go on and answer the question.

A. I did not understand the question.

X. 7. I say the Economy Milling Company is a concern grinding wheat into flour, isn't it?

A. Well, just from the word "Milling" company, I might take it from that.

X. 8. That is what you would think from that, isn't it, what you mean?

A. I suppose that is what I did think, yes.

X. 9. Did you know that there were such things in the flour business as blenders or mixers of flour that did not grind wheat into the flour they sold?

A. Well, I knew there were blenders, branded blended, but I did not know what—I never gave it a thought, not enough to investigate it.

X. 10. Did you know there were such things in the trade, that is, concerns selling flour?

A. No, sir; I don't know that I did at the time I began buying the flour.

X. 11. When did you learn there was any such thing in the flour business as blenders or mixers who did not grind wheat into the flour it sold?

A. I could not exactly say.

X. 12. Only very recently, isn't it?

A. Yes.

X. 13. Did you know that before you came down here to Nashville in reply to the subpoena served upon you?

A. Yes.

X. 14. Only, however, very recently?

A. I have never seen any of the people until this morning?

X. 15. How long have you been in the grocery business?

A. I have been in it for years.

X. 16. How long, about twenty-five years?

A. About twenty-five or thirty years.

Mr. Bane: That is all, Mr. Examiner.

Mr. Malone: That is all.

Witness excused.

H. T. WILLIAMS, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Williams where do you live?

A. Green Briar, Tennessee.

Q. 2. What is your business?

A. General merchandising.

Q. 3. Retail?

A. Yes.

Q. 4. How long have you been in business?

A. A little better than fifteen years.

Q. 5. Do you buy flour?

A. Yes.

Q. 6. Do you handle flour in your business?

A. Yes.

Q. 7. Do you buy plain, self-rising or both?

A. Both.

Q. 8. Do you handle any flour put out by any Nashville concerns?

A. Yes, I have.

Q. 9. What is that?

A. I beg your pardon.

Q. 10. What flour is that, what concern?

A. The Nashville Roller Mills, I handled just a little bit from Freeland & Dirck, or the Freeland Milling Com-

pany, very little, but about ninety per cent I buy from the Nashville Roller Mills.

Q. 11. Has that flour been satisfactory to you and your trade?

A. Absolutely.

Q. 12. Did you know when handling that, that it was not put up by a grinding mill?

A. Yes, before I ever bought the flour.

Q. 13. You understood that all the time?

A. Yes.

Q. 14. Does that cut any figure with you in buying the flour? Does it make any difference to you whether it is put out by a grinding mill or a so-called blending mill?

A. Absolutely not.

Q. 15. What does influence you in buying flour?

A. Well, the first thing is quality, then the price, and service.

Q. 16. Satisfaction to your trade?

A. Yes.

Q. 17. How does the trade ask for flour?

A. Well by the brand.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. What character of concern is the Freeland Milling Company?

A. I don't know. I think they are blenders too, that is my impression. I don't know.

X. 2. Where are they located?

A. Nashville. I am not positive they are, I don't know.

X. 3. You do not know what they are?

A. No, sir.

X. 4. When did you learn that the Nashville Roller Mills did not grind wheat into flour that it sold?

A. Before I ever bought any from them.

X. 5. That does not tell me when?

A. I don't know.

X. 6. Approximately how long ago?

A. I guess eight or ten years ago.

X. 7. How long have you been buying from them?

A. I guess about six.

X. 8. How did you learn they did not grind the wheat into flour?

A. I don't know just how I learned it.

X. 9. You did know?

H. T. Williams C. S. Martin

A. Yes, I did know before we bought.

Mr. Bane: That is all, Mr. Examiner.

Witness excused.

C. S. MARTIN, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. This is Chas. S. Martin?

A. Yes.

Q. 2. You live in Nashville?

A. Yes, I do.

Q. 3. When did you come to Nashville?

A. I came to Nashville, July 5th, 1879, from Virginia.

Q. 4. You never have forgotten that you came from Virginia?

A. No, sir; very proud of that, mention it all I can.

Q. 5. What is your business, Mr. Martin?

A. I am in the wholesale drug business.

Q. 6. How long have you been in that business?

A. Since 1880.

Q. 7. What business have you been connected with in Nashville?

A. First with the firm of Barry Demoville & Company, and then William Litterer, Spurlock, Neal Company, and at present with the McKesson, Spurlock, Neal Company.

Q. 8. Have you held any position in the National Organization of Pharmacists, Druggists or whatever it is called?

A. For one year I was president of the National Wholesale Druggists Association, and I am Senior Counsellor at the present time.

Q. 9. Now Spurlock, Neal & Company and McKesson have only recently consolidated, is that correct?

A. Correct.

Q. 10. So for many years you were connected with Spurlock, Neal Company here in Nashville?

A. Until very recently.

Q. 11. What was your position with them?

A. For many years I was Vice-President and General Manager, and then since the last ten years or more I have been the President.

C. S. Martin

Q. 12. Do Spurlock Neal Company do any manufacturing of any sort?

A. We so considered it. We operate a laboratory which occupies one entire floor of our establishment, which is seventy-eight feet by two hundred ten feet. That floor is devoted entirely to the manufacture of pharmaceutical, toilet articles, proprietary medicines, and such other special formulae as are submitted to us by our customers.

Q. 13. You mean filling prescriptions?

A. We do not call it exactly filling prescriptions. There are certain formulae to manufacture into quantities. Prescriptions is just for an individual to use. We manufacture the goods for re-sale.

Q. 14. So, you are wholesale manufacturing druggists, as I understand?

A. We consider ourselves wholesale druggists and pharmacists, manufacturing pharmacists.

Q. 15. Among other things do you manufacture talcum powder?

A. That is one of the items in the toilet goods line, we manufacture some fifteen or twenty different brands of talcum powder.

Q. 16. Now, tell us how that is done, please?

A. Well, there are certain formulae which we buy in quantities, certain powders, talcum powders, whose old name is soap stone, powdered talc. I remember, though I am not a pharmacist myself, I do know some of the ingredients that enter into it. I am not prepared to give the exact formula, but talcum powder is a powder that is gotten out of the rough, and finally finely powdered, we then use with that boric acid and then certain odors, perfume it, so as to make it delightful, as an odor, and have a different formula for the different brands put up in different packages under brand names.

Q. 17. What do you do with these different ingredients after you get them assembled?

A. They have to be thoroughly mixed, so we have a mixing machine, something on the order of the old fashioned Coffee grinder, excepting very much larger, run by electricity, and we put these different powders in that hopper and they are thoroughly mixed before being put into these cans.

Q. 18. And then you get a finished product from these different elements that you run through your mixer?

A. They are put into the cans, then into certain

boxes and transferred from that department to our jobbing department, wholesale department.

Q. 19. Now, are you rated as a manufacturer in any directory, that you can tell us of?

A. I receive requests for quotations from different parts of the world, in fact, because I am listed as a manufacturer by Thomas' Directory, which is an international directory. I am listed there as a manufacturer of toilet preparations, flavoring extracts and pharmaceuticals, and proprietary medicines. Those are the four different departments of that laboratory.

Mr. Malone: That is all.

Mr. Bane: I move, Mr. Examiner, that the entire testimony of Mr. Martin be stricken as incompetent, irrelevant and immaterial.

Examiner Sheppard: Let it stay in, giving it probative value.

Mr. Bane: Stand aside.

Witness Excused.

T. E. SNELL, was thereupon produced as a witness and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Snell, you live in Nashville?

A. Yes.

Q. 2. What position do you hold with the Snell Milling Company?

A. I am President and Manager.

Q. 3. Is that one of the Company's that has been sued by the Federal Trade Commission in a similar proceeding to this, the Snell Milling Company, a Corporation?

A. Yes.

Q. 4. Received its charter from the State of Tennessee?

A. Yes.

Q. 5. When was that Company organized, Mr. Snell?

A. 1926, I believe.

Q. 6. 1926?

A. '26.

Q. 7. So it has been running something like four years?

A. Yes, in September.

Q. 8. Prior to that were you with the Colonial Milling Company?

A. Yes.

Q. 9. How many years?

A. I believe about three and a half, a little over three years.

Q. 10. In what capacity?

A. As Manager.

Q. 11. Was the Colonial Milling Company a grinding mill or a blending plant when you were with them?

A. A blending plant.

Q. 12. When did they begin to grind?

A. In September, 1926.

Q. 13. And that was when you left them?

A. Yes. I believe I am right about that, it is either September 25th or September 26th—it is four years ago this past September.

Q. 14. Now, what did you have to do with putting out the brand of flour called "Polly Rich" that we have been hearing a good deal about?

A. I put that brand on the market, that is, they had been in business about a year before I went with them and had not done any good towards getting the brand to going.

Q. 15. Well, did you get it established with the jobbers?

A. Yes.

Q. 16. Did you lose any jobbers after you took hold of it?

A. No, sir. I kept every jobber under my own name, that was one reason why I went into business for myself, because man to man I think I can show, although they told me I was making a mistake to go into a grinding plant, that we could give a better flour a more uniform flour, and they would rather buy from a blender, and that was one reason I continued that, and went into the business for myself.

Q. 17. And they started in to grinding, so you thought it was better for you to get in and establish a blending plant of your own?

A. That is right.

Q. 18. Did you purchase the brands and stock of the Mero Mills here?

A. Yes.

Q. 19. Now we have been informed and have seen publications to the effect that the Mero Mills made a stipulation with the Federal Trade Commission, agreeing that they were not millers or manufacturers, and that

they would discontinue the use of the word "Mills" in their name, and of the word "Manufacturing" and so on. Was that made after you had bought the brands?

A. Yes.

Q. 20. Did you hear of that after this proceeding had been charged against you?

A. Yes.

Q. 21. I will ask you if you went to see then the person who was liquidating the Mero Mills and asked him why that had been done?

A. Yes, Mr. George Hearne had charge of it and I went to see him about it.

Q. 22. He was an official of one of the banks here?

A. Yes.

Q. 23. The American National Bank?

A. That is right.

Q. 24. Now did Mr. Hearne give you what he said was a copy of a letter that he wrote the Federal Trade Commission on that point?

A. Yes.

Q. 25. Look at the carbon copy now handed you under date of March 12, 1924, addressed to the Federal Trade Commission, Washington, file No. 1-4664, signed in typewriting, Mero Mills, a blank line, Treasurer, no ink signature appearing, and state whether that is the letter, or a copy of the letter, Mr. Hearne handed you?

A. Yes.

Mr. Malone: Mark that for identification, please.

(Said copy of letter was thereupon marked for identification, Respondent's Exhibit No. 67.)

Mr. Malone: That is offered as Respondent's Exhibit No. 67.

A. The Mero Mills were operating when I bought the brands.

Mr. Bane: When did you buy the brands?

A. July 1st, 1928.

Mr. Bane: May I ask a few questions about this?

Mr. Malone: Yes.

Mr. Bane: Do you know when the Mero Mills made the stipulation with the Commission, to which you refer?

A. No, sir; I don't, other than that letter.

Mr. Bane: This letter does not give the date of the stipulation, Mr. Examiner, I do not see in letting this go in without objection on my part, because I thought that Mr. Malone was laying the foundation for something that was going to be relevant or pertinent to this case—I do not see anything pertinent in Mr. Snell's testimony. This order certainly is not relevant or material to this matter. It is merely with reference to—

Mr. Malone: Let the Examiner read it. It just don't show he had the right to make the stipulation.

Mr. Bane: I don't know. Suppose he made before July 1st, 1928. I don't know when it was made, and he may have made it before that date.

A. I am sure it was made after that time, because at that time when I bought the plant, that is the brands and good will, they had not made up their minds that they were going to quit.

Q. 26. Have you been using the name Mero Mills since?

A. Yes, as a trade name.

Q. 27. And putting flour out under the name of Mero Mills?

A. Yes, sir.

Mr. Bane: Are you offering this as a defense or reason why he is continuing still under the Mero Mills, in conjunction with the whole case?

Mr. Malone: That is one reason, also in conjunction with the publication made by the Milling Journal. I am going to introduce these, show the interest and activities of the Millers in this matter. They are interested in the case.

Mr. Bane: I am perfectly willing to stipulate that the millers are naturally interested in the case, if you want to save the record.

Mr. Malone: My contention Mr. Bane is, that this is really a private controversy.

Examiner Sheppard: I was going to say, Mr. Malone, that it seems to me that we have in this particular issue, that we have got nothing to do with any stipulation that the Mero Mills may have made on the side with the Commission. That is a mere matter of public record, and so far as that is concerned I can take judicial notice of that.

Mr. Bane: You have the date in here when he wrote the letter, but you have not the date here of the stipulation. It is certainly in the commission's records when the stipulation was made.

Mr. Malone: Is there any objection to it going in?

Mr. Bane: Objected to only on the ground of being incompetent, irrelevant and immaterial.

Examiner Sheppard: I do not see any purpose in introducing it at all.

Mr. Bane: No, I do not see the purpose of it at all

Mr. Malone: My purpose is to show a publication, concerning that in the milling journal. I am going to introduce the letter and I want to show what the facts were, and then introduce that publication.

Mr. Bane: Why don't you produce, if you want to do that, Mr. Hearne. I certainly think I ought to have the right to ask him, if you are going to make a question of it, that he had no right, as Mr. Snell is here claiming, and from his letter I suppose Mr. Hearne is a qualified man.

Mr. Malone: I should think so.

Mr. Bane: Why should he sell something he hasn't a right to sell? Why should he make a stipulation, that affects or controls something he had sold to someone else? That does not seem to me to be an honorable act.

Mr. Malone: I think he just signed it as a routine matter because he got the stipulation from the Federal Trade Commission. It made no difference to him as he says in this letter, the bags, sacks, flour, good will, brands, trade name, we sold to the Snell Milling Company of this City.

Mr. Bane: He says that, yet at the same time it is claimed by the side introducing that statement that he did take action affecting the conduct of the business there, of the concern he sold. If that is relevant or material at all, I think Mr. Hearne ought to be produced, and I object to it unless he is produced.

Examiner Sheppard: So far as I know there is no complaint issued by the Commission against the Mero Mills.

Mr. Malone: No, sir; because they have stipulated.

Examiner Sheppard: But there is a complaint as I understand it, which is subject to trial, against the Snell Milling Company?

Mr. Malone: That is correct, a similar proceeding to this.

Examiner Sheppard: Now there is a stipulation already entered into between the Commission and the Mero Mills. There is no stipulation or anything else affecting the Snell Milling Company. Now you will have to stand on the Snell Milling Company. I do not intend to go into the Mero.

A. This Mero was originally a grinding plant, but it was established—

Examiner Sheppard: Yes, but you have testified about that.

Mr. Bane: As I understand the proceeding before the Commission, the stipulations entered into between some party that has been investigated by the Commission and the Commission, in which that party agrees to stop certain practices, the Commission might decide to be unfair, are never and cannot be used as admissions in cases of other parties charged with the same practice, and therefore, any stipulation that may have been entered into by anyone agreeing to stop the practices charged against these blenders here in Nashville, and admitting, and such stipulation does, that such practices are wrongful, cannot be and will not be used in any way whatsoever against any other concern than the party making the stipulation, who may thereafter be proceeded against by the Commission and such stipulation, if one has been entered into, by any other blender in Nashville, will not be used against these blenders in Nashville, against whom the Commission is proceeding.

Mr. Malone: The purpose of offering the letter written by Mr. Hearne, who was the bank official liquidating the Mero Mills, was to show that this stipulation was entered into after the concern had quit business, and after its brands had been acquired by Mr. Snell, and to prevent any prejudice to the Respondent or any other Respondent who is in active business, that might be drawn therefrom, but counsel's statement of facts is entirely satisfactory, and on that statement the exhibit is withdrawn.

Examiner Sheppard: Insofar as the stipulation follows the statement, I will allow it all to stay in.

Mr. Malone: That is all.

Mr. Bane: You do not want to go into any further with him at this time?

Mr. Malone: No, not at this time.

Mr. Bane: Well, that is all then.

Witness Excused.

JERRY MURPHY, was thereupon produced as a witness, and having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. You live in Nashville, Mr. Murphy?

A. Yes, sir.

Q. 2. What is your business?

A. Grocery Business, retail.

Q. 3. How long have you been in the retail grocery business?

A. Seventeen years.

Q. 4. Do you handle flour as a part of your business?

A. Yes.

Q. 5. Have you handled during that time any flour produced by any Nashville concern?

A. Yes.

Q. 6. What?

A. Well, "Lenote."

Q. 7. Who made that?

A. The Liberty Mills.

Q. 8. What else?

A. "Flora."

Q. 9. Was that made by the Ford Flour Company?

A. Ford Flour Company.

Q. 10. The Ford Flour Company.

Mr. Bane: Sold by the Ford Flour Company?

A. Sold by them.

Q. 11. What else?

A. "Polly Rich," "Queen of the South," "Martha White," I have got "Flora," and I have got a flour now called "Menton" made at Lebanon, ground.

Q. 12. I was asking about Nashville? Now who puts up the "Martha White" flour?

A. Royal Milling Company.

Q. 13. Has that flour been satisfactory to you and your trade?

A. Yes.

Q. 14. How long have you been using it?

A. Oh, ever since I have been in business, seventeen years, and before I went in business. I bought, I worked for Maloy Brothers.

Q. 15. You worked for a firm, Maloy Brothers, that handled the "Martha White" before you went into business?

A. Yes.

Q. 16. You yourself have been handling it seventeen years?

A. Yes.

Q. 17. And you have found it satisfactory all that time?

A. Yes.

Q. 18. Do you know when you began handling it and all the time you have been handling it, that it was made by a concern that did not grind the wheat into flour?

A. Well, I did not seem to try it to see whether it did or not, but it did not make much difference with me. I never was told it was not or it was. I heard afterwards it was just a mixer.

Q. 19. You heard after you began using the flour that it was made by a blender or a mixer?

A. Yes, sir.

Q. 20. How long ago was that?

A. I don't know exactly, some fifteen years or so ago.

Q. 21. Some fifteen years ago?

A. Yes.

Q. 22. You have been using it fifteen years with the knowledge it was made by a mixer or a blender?

A. Yes.

Q. 23. What influences you in buying a flour?

A. Lots of people call for the brand.

Q. 24. I am not asking about your customers, but what influences you when you buy flour?

A. The quality.

Q. 25. And what about the price?

A. The price has something to do with it, too.

Q. 26. Satisfaction to your customers?

A. Sure.

Q. 27. All those three things?

A. Yes.

Q. 28. Does it make any difference to you whether it is made by a mixer, a grinder, or who makes it?

A. No, sir.

Q. 29. Does the use of the word mill in the man's name, or milling, cut any figure with you?

A. No, sir.

Q. 30. Now, you started to tell us about your customers. How do they ask for flour?

A. You send them a brand of flour this time, if they are a new customer, if that flour is good and gives satisfaction they will call for it.

Q. 31. That is, call by name?

A. Some will say, give me a twenty-four sack of a good flour.

Q. 32. Some will call for it by name and some ask for good flour?

A. Yes.

Q. 33. And you give what you think is good flour?

A. Yes.

Q. 34. Is Martha White within that description?

A. Yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Who makes "Queen of the South"?

A. Snell Milling Company.

X. 2. That is the one that sells you anyhow, is that it?

A. Yes.

X. 3. Where is your store?

A. 900 Eighth Avenue, South.

X. 4. What section of the City is that in?

A. South.

X. 5. Is that a residential section?

A. Yes.

X. 6. What character or class of people are in that section?

A. Well, the section is kind of going down now. They were first class, all white folks when I started up until three or four years ago. It is kind of going down a little bit at the present time.

X. 7. Mostly darky trade now?

A. Yes, my trade is out in Waverly and West Nashville.

X. 8. You have a lot of that trade around there too, haven't you?

A. Yes.

X. 9. Most of your trade is darky trade?

A. No, sir.
X. 10. A large per cent is darky trade?
A. No, sir; not more than one-tenth.

Mr. Bane: That is all, Mr. Examiner.

Witness excused.

W. D. BUMPUS, having thereupon been produced as a witness, and being first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Bumpus, you live in Nashville?
A. Yes.
Q. 2. What is your business?
A. Grocery.
Q. 3. Retail groceries?
A. Yes.
Q. 4. Do you handle flour?
A. Yes.
Q. 5. How long have you been in the retail grocery business?
A. It will be seven years this coming May.
Q. 6. Do you handle any flour produced by a Nashville concern?
A. Well, I handle, the only thing I handle right at the present is "Martha White."
Q. 7. And that is produced by the Royal Milling Company of Nashville?
A. Yes, by the Royal Milling Company.
Q. 8. How long have you been handling "Martha White"?
A. Ever since I have been in business.
Q. 9. About seven years?
A. Yes.
Q. 10. Have you found it satisfactory?
A. Yes, it is very satisfactory.
Q. 11. To yourself and to your customers?
A. To my customers.
Q. 12. Did you know that the Royal Milling Company was not a grinding mill?
A. Yes.
Q. 13. You knew that when you began dealing with them?
A. Yes.

W. D. Bumpus

Q. 14. And have known it all the time?

A. Yes, I have been handling Royal's about twenty years off and on, but I was not in business for myself.

Q. 15. And you knew of course, as you say, that it was made by a blending mill?

A. Yes, I knew what it was.

Q. 16. Does it make any difference to you in buying flour whether a man calls himself a blender, a miller, or what he calls himself?

A. No.

Q. 17. What does influence you in buying flour?

A. Quality and price.

Q. 18. Quality, price and satisfaction to your trade?

A. Yes.

Q. 19. How does your trade ask for flour?

A. They ask for "Martha White."

Q. 20. Ask for it by name?

A. By the name, yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. How long have you lived in Nashville, Mr. Bumpus?

A. 1905.

X. 2. 1905?

A. Yes, sir.

X. 3. Have you been in the retail grocery business all the time?

A. No, I have just been in for myself, soon will be seven years. I have been around a grocery pretty near ever since I have been here since 1906.

X. 4. Since 1906 you have been in a grocery?

A. Yes.

X. 5. You have been in a grocery but not for yourself, ever since you have been in Nashville?

A. No, not for myself.

X. 6. That grocery handled flour?

A. Yes, my father handled flour.

X. 7. Ever since you have been in Nashville you have been handling flour?

A. Yes.

X. 8. You do not know from these twenty years here in Nashville handling flour that a great many of these concerns from Nashville selling flour are blenders and not wheat grinding mills, you would consider yourself a very poor type of man?

A. Sure, I knew it.

Mr. Bane: That is all, Mr. Examiner.

Witness excused.

J. R. SNEED was thereupon produced as a witness, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Sneed, you live in Nashville?
A. Yes.
Q. 2. What is your business?
A. Grocery business.
Q. 3. Retail?
A. Yes.
Q. 4. How long have you been in business?
A. Why, I have been at this place since 1913. I have been in business for myself two years.
Q. 5. Since 1913 you were connected with some one else in the Grocery Business?
A. No, sir; the same place, only with Mr. Thuss, and I bought out the business.
Q. 6. You were working for Mr. Thuss, were you?
A. Yes, I went to work for him in 1913.
Q. 7. Now, during that time when you were working for Mr. Thuss, did he handle any Nashville flour that you know?
A. Yes.
Q. 8. What was that?
A. He handled "Martha White."
Q. 9. That is produced by the Royal Milling Company?
A. Yes.
Q. 10. Was that a satisfactory flour?
A. Yes.
Q. 11. Have you been handling it since you have been in business for yourself?
A. Yes, sir.
Q. 12. Has it proved satisfactory to yourself and customers?
A. Yes.
Q. 13. Did you know when you were handling it, that it was made by a so-called blending mill and not by a grinding mill?
A. Yes.

Q. 14. Does that make any difference to you about flour?

A. No, sir.

Q. 15. Or the name of the manufacturer, whether he calls himself a miller, a blender, or what?

A. It does not make any difference to me, no, sir.

Q. 16. What are the things that influence you in buying flour?

A. Quality, price and service.

Q. 17. And the satisfaction to your trade?

A. The satisfaction to my trade, yes.

Q. 18. How do your customers ask for flour?

A. Well, some of them ask for a good flour, but most of the trade ask for a brand of flour.

Q. 19. Do you handle "Queen of the Pantry"?

A. Yes.

Q. 20. Does that sell higher than the "Martha White"?

A. Yes.

Q. 21. Is it in your opinion any better flour?

A. No, sir. I could not say that it is. I sell a good many people "Queen of the Pantry," and I have sold them other brands and the other brands give them just as good satisfaction.

Q. 22. The other brands, including "Martha White"?

A. "Martha White," yes, and "Flora."

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Have you ever used "Queen of the Pantry"?

A. You mean myself?

X. 2. Personally?

A. No, sir.

X. 3. Have you ever used "Martha White"?

A. Yes, I use that all the time.

X. 4. You never have used Queen of the Pantry?

A. No, sir.

X. 5. What other flour do you handle besides "Martha White" and "Queen of the Pantry"?

A. "Flora."

X. 6. Who makes that?

A. The Moore-Hooten Flour Company.

X. 7. They sell it?

A. They sell it, yes.

X. 8. Do you know who makes the flour?

A. No, sir.

X. 9. All right, what other?

A. What other flour?

X. 10. Yes?

A. "Martha White."

X. 11. You have named that, "Martha White," "Flora" and "Queen of the Pantry"?

A. Yes.

X. 12. Only those three brands?

A. Yes.

X. 13. How long did you handle Martha White flour?

A. I have handled at this place, while Mr. Thuss was handling it, when I worked there.

X. 14. Handled it when you went there in 1913?

A. Yes, in 1913.

X. 15. The salesman of the Royal Milling Company called on you?

A. Yes.

X. 16. Called on the store to receive orders?

A. Yes.

X. 17. And such salesmen have been calling ever since you have been there?

A. No, sir.

X. 18. How long has it been since the salesman called on you, how long has the salesman been calling on you?

A. The one calling on me now?

X. 19. Any one, a representative?

A. Oh, you mean—he has been calling on me there, I guess seven or eight years.

X. 20. Before that time no representative of the Royal Milling Company called on you?

A. Yes.

X. 21. It is true, that ever since you have been there a representative of the Royal Milling Company has been calling and selling that flour?

A. Yes.

X. 22. When did you learn that the Royal Milling Company did not grind wheat into the flour it sold?

A. In a short time after I went to work for Mr. Thuss.

X. 23. Within two years?

A. Yes.

X. 24. Within two years after you went to work for him?

A. Something like that. I have been knowing it some time, yes.

X. 25. How did you learn it?

A. Through my boss, Mr. Thuss.

X. 26. Mr. Thuss told you so.
A. Yes, sir.
Witness excused.

R. E. VANTREAS was thereupon produced as a witness and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Vantreas, do you live in Nashville?
A. I live at 1540 Fourteenth Avenue, North.
Q. 2. In Nashville?
A. Yes.
Q. 3. What is your business?
A. Grocery business.
Q. 4. Retail grocery business?
A. Yes.
Q. 5. How long have you been in business?
A. I have been there, it will be two years in August.
Q. 6. Do you use or handle any flour produced by a Nashville concern?
A. Yes.
Q. 7. What is that?
A. I use flour, from the Cherokee Mills, the Nashville Roller Mills, The Royal Milling Company, and The Liberty Mills.
Q. 8. You buy from all of those?
A. Yes, sir.
Q. 9. Have those flours proven satisfactory?
A. Yes.
Q. 10. To you and your trade?
A. Yes.
Q. 11. Did you know that the Royal Milling Company, The Cherokee Mills, the Nashville Roller Mills were what are called, blenders, and not grinders of flour?
A. Yes.
Q. 12. You knew that when you were dealing with them?
A. Yes.
Q. 13. Have those products been satisfactory to your trade?
A. Yes.
Q. 14. What influences you in buying flour, Mr. Vantreas?
A. Well, the quality, service and price.
Q. 15. And satisfaction to your trade?
A. And satisfaction, yes.

R. E. Vantreas

Q. 16. Well, how do your customers ask for the flour?

A. Well, we have a boy that goes out on the route and they will tell him they want a sack of flour, they will call for "Martha White," "Royal Self Rising," "Gloria," something of that kind, or whatever they call for, we try to have it and send it to them.

Q. 17. They call for it by the brand?

A. Yes. Sometimes they will come in the store and say they want a sack of good flour.

Q. 18. So, it makes no difference to you what the man calls himself who produces the flour, whether a blender, miller or what?

A. Not a bit.

Q. 19. What flour do you buy from the Liberty Mills?

A. The brand of it is "Good Taste."

Mr. Malone: That is all, Mr. Bane.

Cross-examination by Mr. Bane:

X. 1. When did you learn that the Cherokee Mills did not grind the wheat into flour?

A. Well, I have been knowing it all the time. I have been in the place several times.

X. 2. You have been in the plant?

A. Yes.

X. 3. Do you know when you went in the plant?

A. Do I know when I went to the plant?

X. 4. Yes, when you first went in the plant?

A. Oh, I have been going in there off and on ever since I have been in business.

X. 5. You have been in there off and on ever since you have been in business?

A. Yes, sometimes I go there to get flour, be in a hurry for a barrel.

X. 6. That is the way you learned that they did not grind wheat into flour, from a visit to the plant?

A. No, I knew it anyway.

X. 7. How did you know it?

A. I think they told me so.

A. 8. You think they told you?

A. Yes.

X. 9. Did you ask them?

A. No, I don't know that I did.

X. 10. How did you learn the Nashville Roller Mills did not grind the wheat into the flour it sold?

A. I used to work over there close to that place. I

have been by there time and time again, and have been in the place and knew that they did not grind it.

X. 11. You learned that from contact with the plant before you went into the Grocery Business, is that right?

A. Yes, sir.

X. 12. How did you learn the Royal Milling Company did not grind wheat into flour?

A. I don't know how I learned it. I knew they did not grind it. I have been in the plant.

X. 13. Did you go into the plant before you bought anything from them?

A. No, sir.

X. 14. How did you learn it?

A. I could see that they did not grind when I went in there.

X. 15. You did not know it before you went in there, did you?

A. No, I don't know that I did.

X. 16. Have you been buying flour from the Royal Milling Company since you have been in business?

A. Ever since I have been in business.

Mr. Bane: That is all, Mr. Examiner.

Witness excused.

L. D. GOWER was thereupon produced as a witness and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Gower, are you in the retail grocery business in Nashville?

A. Yes, sir.

Q. 2. How long have you been in that business?

A. I have been to myself about four and a half years. I used to be in the old firm of Loveman & Gower, about thirty years.

Q. 3. So altogether you have been in the retail grocery business over thirty years?

A. Yes.

Q. 4. Do you handle flour?

A. Yes.

Q. 5. Do you handle any flour produced by any Nashville concern?

A. How is that?

Q. 6. Do you handle any flour made by any Nashville concern, any Nashville mill here?

A. Yes.

Q. 7. What is that?

A. Well, we handle "Flora," "Tip-top," plain as well as self-rising, "Martha White," "Polly Rich," and some "Good Taste" I believe it is called.

Q. 8. Who makes the "Tip Top" flour?

A. Cherokee Mills.

Q. 9. Who makes the "Martha White"?

A. "Martha White," I believe that is the Colonial Mills, isn't it? I am not sure about that name.

Q. 10. Well, does it make any difference to you who makes it?

A. Certainly not.

Q. 11. Whether he is a so-called blender or grinder, does that make any difference to you?

A. No, if it suits the trade, that is all we care for.

Q. 12. And the price is right?

A. Yes.

Q. 13. Did you know that the Cherokee Mills was what is called a blender and not a grinder?

A. Yes.

Q. 14. You knew that when you were buying the flour?

A. Yes.

Q. 15. The "Martha White" and "Flora" from the Cherokee Mills, has that proven satisfactory to you and your trade?

A. Yes.

Q. 16. What influences you in buying flour?

A. Well, we try to have something that the trade calls for, that the trade wants. Of course, they want the quality and as cheap as they can get it.

Q. 17. The price, the quality and satisfaction to your trade?

A. We try to handle flour that sells.

Q. 18. How do they ask for flour?

A. They say send us a sack of "Tip Top," a bag of "Flora," whatever they want.

Q. 19. They ask for it by brand name?

A. Yes.

Q. 20. Do you pay more for "Martha White" and "Tip Top" than you do for "Polly Rich"?

A. I don't think so.

Q. 21. You think they run about the same?

A. About the same, yes.

Mr. Malone: That is all.

L. D. Gower

Cross-examination by Mr. Bane.

X. 1. Where is your store located here, Mr. Gower?

A. Out in West Nashville, 5008 Charlotte Avenue.

X. 2. What section of Nashville is that?

A. West.

X. 3. Is it a residential section?

A. Yes, a whole lot of people live out there. There are some factories out there too, I suppose you would call it.

X. 4. Most of those who trade with you are those who work in the factories?

A. A good many.

X. 5. Practically all of them are salaried, are working in a factory?

A. Not altogether, a lot of them work in the factory.

X. 6. The majority, isn't it?

A. I suppose so.

X. 7. What percent is darky trade?

A. We do not get much darky trade.

X. 8. When did you learn that the Cherokee Mills did not grind the wheat into the flour it made?

A. Oh, I could not say. I knew they were getting flour away from here, from the north, a long time ago. I don't know just how long it has been.

X. 9. How did you learn it?

A. The draymen would tell us.

X. 10. That is the way you would learn?

A. The flour you would get in in carloads.

X. 11. You learned it by being told by the drayman?

A. Yes.

X. 12. The same thing is true of the other concerns that are blenders, of which you buy?

A. I never have asked much about it or thought much about it. I think nearly all flour used in Nashville is sent from the north.

X. 13. You knew from your conduct of a business, and assumed that people knew in the City of Nashville, that most of the concerns in Nashville calling themselves mills or milling companies were blenders?

A. Yes.

Mr. Bane: That is all.

Witness excused.

J. S. SMOTHERMAN was thereupon produced as a witness and, having first been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Smotherman, you are a retail merchant in Nashville?

A. Yes.

Q. 2. How long have you been in business?

A. Twelve years the 18th of this coming March.

Q. 3. Do you handle flour in your business?

A. Yes.

Q. 4. Do you handle any flour that is made by any Nashville concern?

A. Yes.

Q. 5. What is that?

A. "Martha White," "Royal," "Tip-Top," and a flour that they call "My Gal."

Q. 6. That ought to be a good seller, Mr. Smotherman. Who puts out these flours?

A. The Cherokee Milling Company. The Royal Milling Company and a man by the name of Hassell has the agency of that other, I think the Colonial puts that out.

Mr. Bane: That is, "My Gal"?

A. Yes.

Q. 7. Now, Mr. Smotherman, have you known all the time that the Royal Milling Company and Cherokee Mills were what are called Blenders and not Grinders?

A. Oh, yes, I knew they were blenders.

Q. 8. Does that make any difference to you in buying flour?

A. No, sir.

Q. 9. What influences you in buying flour?

A. Quality, service and price.

Q. 10. And what else?

A. Satisfaction to the customer.

Q. 11. The man's name has nothing to do with it?

A. No, sir.

Q. 12. Whether he calls himself a milling company, a blender or what?

A. No, sir.

Q. 13. How did your customers ask for flour?

A. Some ask for good flour, some call by name.

Q. 14. By the brand name?

A. I lot of them, yes, will come in and call for Martha White or "Royal," if they want self-rising; some ask for just a good flour.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Who makes the "Royal" brand, who puts out the "Royal"?

A. Royal Milling Company.

X. 2. Royal Milling Company?

A. Yes.

X. 3. Did you handle both plain and self-rising?

A. Yes.

X. 4. When did you learn, Mr. Smotherman, that the Cherokee Mills did not grind the wheat into the flour it was selling you?

A. I could not tell you exactly the year, but I have heard it discussed several times.

X. 5. Several times recently?

A. Years ago.

X. 6. How long ago?

A. I don't know.

X. 7. Approximately, about five years ago?

A. Oh, ten or twelve.

X. 8. About twelve years ago?

A. Yes, I could not say so much about that, but really I knew that about the Cherokee, I could not tell you just when I heard that.

X. 9. Do you know how you heard it?

A. No, sir; only just general conversation among salesmen.

X. 10. That came into your store?

A. Yes.

X. 11. Some of those told you about it?

A. I heard it talked about.

X. 12. Talked about it?

A. Yes, sir.

X. 13. When did you learn the Royal Milling Company did not grind the wheat into the flour it sold you?

A. Some fourteen or fifteen years ago.

X. 14. How did you learn that?

A. I had been in the mill several times. I used to board and work with a lady that handled it and heard them talk about it.

X. 15. You have been in the mill?

A. Yes.

X. 16. Do you know Mr. McGraw?

A. Yes, I did long years ago.

X. 17. How long have you known Mr. McGraw?

A. I expect it has been twenty years, something like that.

Mr. Bane: That is all, Mr. Examiner.

Witness excused.

Mr. Malone: Mr. Examiner, it is twelve thirty. I think that exhausts the witnesses we have. We will go ahead at two if it is satisfactory.

Examiner Sheppard: Take an adjournment until two o'clock.

(An adjournment was thereupon taken until 2:00 o'clock P. M. this date.)

Docket No. 1601.

Nashville, Tennessee, January 15th, 1930.

Met pursuant to adjournment at 2:00 o'clock P. M. Before:

William W. Sheppard, Examiner.

Appearances:

Mr. Baldwin B. Bane, for the Commission.

Mr. Thomas H. Malone, Jr., for the Respondents.

ROBERT F. FUHR, was thereupon produced, as a witness and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Fuhr, you live in Nashville?

A. I do.

Q. 2. Are you a retail grocer?

A. Yes.

Q. 3. Under what name do you do business?

A. Fuhr Brothers.

Q. 4. How long have you been in business?

A. Since 1916.

Q. 5. You use flour in that business?

A. Yes, sir.

Q. 6. Plain or self-rising or both?

A. Both.

Q. 7. What flours have you been using?

A. "Gloria," "Tip-Top" and "Queen of the Pantry."

Q. 8. "Gloria" is made by the Nashville Roller Mills?

A. Yes.

Q. 9. "Tip-Top" by the Cherokee Mills?

A. Yes, sir.

Q. 10. Do you know who makes "Queen of the Pantry"?

A. No, I do not. It is made in Missouri somewhere.

Q. 11. However, the "Gloria" and "Tip-Top," have they given satisfaction to you and your customers?

A. They do, yes.

Q. 12. Mr. Fuhr, have you held any office in the Retail Merchants Association here in Nashville?

A. I was President for two terms.

Q. 13. Now, did you know that the Cherokee Mills and the Nashville Roller Mills were so-called blenders and not grinders of wheat when you were buying the flour?

A. I did.

Q. 14. Did that make any difference to you Mr. Fuhr in buying the flour?

A. No.

Q. 15. If I understand you then, whether the flour is made by a so-called blender or mixer or so-called grinder, does not influence you?

A. I was only interested in the quality of the flour.

Q. 16. In the quality and price and satisfaction to your customers?

A. Yes.

Q. 17. Do you pay more for "Queen of the Pantry" than "Gloria" or "Tip-Top"?

A. Usually about a dollar a barrel.

Q. 18. Have you used "Queen of the Pantry" in your home?

A. Yes.

Q. 19. And "Gloria" or "Tip-Top," either one of those?

A. I have used all three.

Q. 20. Have you any preference as between them?

A. No, I would just as soon have one as the other.

Q. 21. Mr. Fuhr, when customers come to your store, how do they ask for flour?

A. Usually by the brand.

Mr. Malone: That is all.

Mr. Bane: Stand aside.

Witness excused.

R. E. PARDUE, was thereupon produced as a witness, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Pardue, are you a retail grocer?

A. Yes.

Q. 2. In Nashville.

A. Yes.

Q. 3. How long have you been in business?

A. Well, the last time I have just been in something near two months, but I have been practically in the grocery business here with the exception of some small short times, for the last ten or twelve years.

Q. 4. Do you handle flour as part of your trade?

A. Yes.

Q. 5. Plain, or self-rising or both?

A. Both.

Q. 6. Have you handled any flour made by any Nashville mill?

A. Yes, all the flour that I handle comes from the Nashville Milling Company, most all of it. I never handle any, not recently, out of the City, at all.

Q. 7. Now what flours have you been handling?

A. I handle at the present time from the Cherokee Mills and the Colonial Mills—and I will retract one thing, when I went in and took charge of this last stock, there was some flour from the Dunlop Milling Company, I believe from out of town, I am not sure. I am not handling that. I did handle that for a while but discontinued it, and at the present time handle that Cherokee and Colonial, the "Martha White" brand, and different grades, three or four.

Q. 8. The Royal Milling Company?

A. The Royal Milling Company.

Q. 9. Did you know the Cherokee Mills, The Colonial and Royal Milling Companies were blenders, so understood, when you were buying the flour?

A. Yes.

Q. 10. Does it make any difference to you when buying flour whether it is put up by a so-called blender or a so-called miller or grinder?

A. No, sir; it does not.

Q. 11. What influences you in buying flour?

A. Well, it is the quality of the flour, of course, the price and the demand I get from the public.

Q. 12. And the satisfaction?

A. The satisfaction that the flour gives to my trade and the treatment I get from the Company.

Q. 13. How does your trade ask for flour?

A. Well, where they are set on any particular brand, they will come in and call for a sack of self-rising, say "Tip-Top", plain "Tip-Top", designate the brand they want. If they are not set on any particular brand, they will say, "Give me a sack of good self-rising or plain flour."

Q. 14. And you fill the order?

A. I fill the order, yes.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Were you born and raised in Nashville, Mr. Pardue?

A. No, I was raised in Sumner County, born in Sumner County.

X. 2. How many years have you been in Nashville?

A. I have been here since I was practically thirty-five years old. I am now sixty-three.

X. 3. How did you learn the Cherokee Mills did not grind wheat into the flour it sold?

A. I just heard it spoken of. In fact I have heard it said there was probably only one mill, some time back, that was the Liberty Mill, that did their own grinding, and I have heard a lot that the Colonial Mills and all the others just blended their flour. I got that through common talk and conversations.

X. 4. You have heard in the City of Nashville, at least, that there was some talk of these concerns calling themselves "Mills," or "Milling Companies," that there was really only one Company that actually ground the wheat into the flour, is that right?

A. Sometime back, yes, I understood the Liberty was the only one, but there may be others.

X. 5. Of those concerns, those mills or milling companies, that was the only one that actually ground the wheat into the flour, as you understood?

A. Yes.

Mr. Bane: That is all.

Witness excused.

HARRY A. ARNOLD, was thereupon produced as a witness, and having been first duly sworn, testified as follows:

Harry A. Arnold

Direct Examination by Mr. Malone.

Q. 1. Mr. Arnold, you live in Nashville?
A. Yes.
Q. 2. How long have you been living there?
A. About eighteen years.
Q. 3. What is your business?
A. I am in the flour brokerage business and have been for the past five years.
Q. 4. Have you, at any time within the past current year, sold any flour, through you, as a broker, to the Lily Mills, of Franklin, Tennessee?
A. I have.

Mr. Bane: Mr. Examiner, may I have the same objection to this testimony as I made on yesterday to the testimony on yesterday of the same nature?

Examiner Sheppard: Yes, Mr. Reporter, note the objection and let the witness answer, under the previous ruling.

Q. 5. Could you undertake to estimate the amount of flour going into that place?
A. To be conservative, I would say it would amount to three thousand barrels.
Q. 6. Have you had up with Mr. Corn, the proprietor of that mill, the question of a sale recently?
A. Yes.
Q. 7. Mr. Corn is president of the Lily Mills, I believe?
A. He is the buyer.
Q. 8. And you have had up with him the question of buying some more flour for this mill?
A. I have.
Q. 9. How many barrels was that contemplated sale?
A. This past amount, that he bid on, was fifteen hundred barrels.
Q. 10. You did not make the sale?
A. I missed it by a nickle.
Q. 11. You could not quite get together with him on the price?
A. I could not.
Q. 12. You could not?
A. No, sir.

Mr. Malone: That is all.

Cross-examination by Mr. Bane.

X. 1. Where is the Lily Mills located?

A. Franklin, Tennessee.

X. 2. Do you know what size mill it is?

A. No. I would judge it was about a six hundred barrel mill.

X. 3. Six hundred barrels a day of a twenty-four hour shift?

A. Twenty-four hour capacity, I would judge that is what their capacity was.

X. 4. It is a grinding mill, Mr. Arnold?

A. Yes.

Mr. Bane: That is all, Mr. Examiner. I move of course to strike the testimony as incompetent, irrelevant and immaterial.

Examiner Sheppard: The same ruling as on yesterday.

Witness Excused.

C. J. TRAVIS, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Mr. Travis, do you live in Nashville?

A. Yes.

Q. 2. What is your present occupation?

A. Wheat buyer and production manager of the Liberty Mills and Ford Flour Company.

Q. 3. The Liberty Mills and the Ford Flour Company are together now?

A. Yes.

Q. 4. How long have you been with the Liberty Mills?

A. About three years.

Q. 5. Is Mr. McCarthy now President of the Liberty Mills?

A. Yes, sir.

Q. 6. Before going with the Liberty Mills, with what concern were you affiliated?

A. The Washburn-Crosby Company.

Q. 7. Where is that situated?

A. I was with the Louisville mill. They have Mills all over the United States.

Q. 8. Is that a large or a small concern?

A. Very large.

Q. 9. Give us an idea of the daily capacity when you were with them?

A. Around fifty thousand barrels.

Q. 10. Has that capacity increased?

A. Yes, they bought quite a few mills in the last two or three years.

Q. 11. What was your position with the Louisville branch?

A. Manager.

Q. 12. Have general supervision of the whole mill?

A. Yes.

Q. 13. That brought you in contact with the milling processes and the cost and everything about it?

A. Yes.

Q. 14. Did that mill sell the same territory as the Nashville blenders?

A. Yes, practically the same, they sold the southeast.

Q. 15. Does the Liberty Mill do that?

A. Yes.

Q. 16. Were you in position to know the cost, the manufacturing cost of the Washburn-Crosby mill when you were with it?

A. Yes, I figured that.

Q. 17. Also of the Liberty?

A. Yes.

Q. 18. Did the Washburn-Crosby Mill Company sell flour at cost to the Nashville blenders that you know of?

A. Yes, quite a bit.

Mr. Bane: I object to that, Mr. Examiner, as incompetent, irrelevant and immaterial.

Examiner Sheppard: I will let him answer the question.

Q. 19. You said quite a bit of it?

A. Yes.

Q. 20. Has the Liberty Mill done the same thing, that you know of?

A. Yes.

Q. 21. How were you able to do this, Mr. Travis, explain that to the Examiner?

A. If we had planned on a certain operation, a certain length of time, eighteen or twenty-four hours a day and our family trade, that is the regular package trade

for some reason or another did not take as much flour as we anticipated, that meant surplus flour, which flour we had to sell somewhere, and it was better to sell to a blender or some one on a boat basis at cost, than to shut down the mill or pack it in jutes and send it to a warehouse.

Q. 22. Does it reduce the cost to proceed on the basis of a twenty-four hour run?

A. Very materially.

Q. 23. Explain why that is?

A. The manufacturing cost in the mill is a very small item as compared to the total cost, and as I say, if you have crews to operate twenty-four hours a day and the business, family business, the business in your own brands comes in only to take sixteen hours a day of the capacity, then it is to your advantage to sell the other eight hours' production wherever you can and at the best possible price, even though you have to sell it at the actual cost of the wheat.

Q. 24. In running on a twenty-four hour basis, do your general items of overhead remain the same?

A. Yes.

Q. 25. What are the increased items of cost on a twenty-four hour basis a twelve hour basis?

A. Only the power and actual labor costs.

Q. 26. Proportionately, how do they rank with the items of overhead, that is, the power and labor costs?

A. They are very small, not over fifteen to twenty cents a barrel as compared with the total cost on a twelve hour basis, average from a dollar and a quarter to a dollar and a half.

Q. 27 And on a twenty-four hour basis?

A. Seventy-five to eighty cents, all costs.

Q. 28. Now you are figuring in the cost of the wheat the conversion charges and the fixed charges all over?

A. Every charge exclusive of the raw material, exclusive of the wheat.

Q. 29. That is exclusive of the wheat then?

A. Yes.

Q. 30. And by running twenty-four hours that reduces the unit cost of the whole operation?

A. Yes.

Q. 31. Reducing it materially, is that correct?

A. Fifty to seventy-five cents a barrel.

Examiner Sheppard: Mr. Travis, is that a custom, trade practice that you have just described, of mills selling their surplus at cost of production?

Mr. Bane: He has not shown he knows anything about the trade customs. He has only been with two mills, Mr. Examiner.

Examiner Sheppard: I know, but I am talking about his own mills?

A. Yes.

Examiner Sheppard: I want to know if you are sufficiently versed in, or if you are sufficiently informed to tell me if other mills do that?

A. Yes, quite a few of them that I know of do it.

Examiner Sheppard: Throughout the country?

A. Yes, sir.

Examiner Sheppard: Sell their surplus at cost price?

A. Yes.

Examiner Sheppard: Well, if a great many mills did that, it would cause to be available a great supply of flour to be sold at cost basis, would not it?

A. Yes.

Examiner Sheppard: All right, Mr. Malone, go ahead.

Q. 32. And in that way, blenders by buying this surplus are enabled to compete with the wheat grinding mills, is that correct?

A. That is right.

Examiner Sheppard: Here is another question I would like to ask you right there, it may have been in the testimony already. The Liberty Mills as I understand in years past, was a grinding mill. Is it so now?

A. Yes.

Examiner Sheppard: In all of its entire output?

A. Practically all, yes.

Q. 33. Are you familiar with the process of making self rising flour, Mr. Travis?

A. Yes.

Q. 34. Are you making that now at the Liberty Mills?

A. Yes.

Q. 35. Is it possible to make self rising flour by blending wheat berries and the leavening ingredients and putting them in the conveyor together, and running them through the mill, is that possible to make self rising flour?

A. No.

Q. 36. If I understand you then, it is necessary first to make your flour by a separate operation, and separate machinery, and then make your self rising flour from that product, and the leavening ingredients by another operation, is that correct?

A. That is right, sir.

Q. 37. And that is true in a grinding mill just as it is in a blending mill?

A. Yes.

Q. 38. Is making self rising flour a manufacturing operation in itself?

Mr. Bane: Objected to Mr. Examiner. That is the question the Commission will decide after he describes the way they make it.

Examiner Sheppard: Yes.

Mr. Malone: Perhaps that is a little direct. We have had a great many amateurs discoursing on manufacturing. I will get at it in another way.

Q. 39. How do you make self rising flour?

A. Incorporate soda, and salt and phosphates into the flour.

Q. 40. Now, just explain how that is made by the Liberty Mills, for instance?

A. The flour is milled, aerated, dropped into a bin, and the soda, salt and phosphate is then put into it and dropped on down into mixers where it is thoroughly mixed, then on into a conveyor and over the reel and into the packer.

Q. 41. Did you know how this operation is done in the so-called blending mills?

A. Yes.

Q. 42. Is there any difference in the principle between the blending mill and the grinding mill?

A. None in principle, no, sir.

Q. 43. It is done by the same class of machinery and in the same general way which you have described?

A. Yes.

Q. 44. Do you know of any difference between the terms blender or mixer or are they used interchangeably?

A. Interchangeably I would say. I know of no difference between them.

Q. 45. Have you a laboratory equipment at your Liberty Mills?

A. Yes.

Q. 46. Do you use it?

A. No, sir.

Q. 47. Why not?

A. We do not sell to people as a rule who buy flour or chemical analysis and that is the only reason we have ever found for a laboratory.

Q. 48. You sell flour to consumers or people who are going to sell to consumers?

A. Yes, that is right.

Q. 49. What they want is a baking quality?

A. Yes.

Q. 50. What tests do you use?

A. The Pekar tests and baking.

Q. 51. Is the Pekar test sometimes called the paddle test?

A. Yes.

Q. 52. You consider it is the practical tests?

A. They are, yes.

Q. 53. Those tests, were they used by you in the Washburn-Crosby Milling Company?

A. Yes, in addition to the chemical tests.

Q. 54. You had both there at that plant?

A. Yes.

Q. 55. Now a chemist from Ballard & Ballard, Mr. Whiting, testified here recently, and as I understood his testimony he said he could get a more uniform flour from blending wheat berries in a grinding mill than from blending the flour itself in a blending plant. What is your opinion about that?

A. I think that is wrong. You will certainly get a more uniform, at least as uniform a flour by blending flours together, as you can tell more about the flour than you can about the wheat.

Q. 56. In other words, the flour as a finished product as compared with wheat?

A. That is right.

Q. 57. Semi-finished product, more advanced at any rate. Did you ever have any difference of opinion when you were with the Washburn-Crosby Company between their chemist and chemists in other places?

A. Frequently.

Q. 58. What would happen in that connection?

A. They would bake the flour and determine finally from that test as to whether or not it was satisfactory to go out.

Q. 59. You mean that they put it to the baking test?

A. Yes.

Q. 60. That was a supreme test?

A. Yes.

Q. 61. And above all the chemists?

A. Yes.

Q. 62. Are you a chemist?

A. No, sir.

Q. 63. Did you ever have it happen that the chemist, that the Louisville Chemists and the Minneapolis chemists of the Washburn-Crosby Company would differ on the analysis of the same sample?

A. Frequently.

Q. 64. Mr. Travis, in your opinion, can self rising flour be made just as well on a practically continuous process, that is, taking the flour direct from the grinding machinery and without waiting for it to cool in any way, and adding the leavening ingredients, do you think it as satisfactory a method as the method of allowing the flour to cool before adding the leavening ingredients?

A. No, I think it is not. I knew from experience that it is not. We have tried mixing the ingredients on the stream and had trouble with the flour, always.

Q. 65. And so, in your opinion, it is better, it makes a better product, to let the flour cool off before adding the leavening ingredients?

A. Yes, sir; I know that it does.

Q. 66. Do you know the practice of some mills as to packing the flour before adding the ingredients?

A. Yes, some of them do that, allow it to age before they add the ingredients.

Q. 67. For the self rising flour?

A. Yes.

Q. 68. Now Mr. Whiting, as I recall his testimony, testified that in Ballard & Ballard's mill it was practically a continuous process, a very small pause before adding the leavening ingredients, and also that they did not rebolt the flour after adding the leavening ingredients. In your opinion is that good practice as a miller?

A. No, the flour is bound to be lumpy if it is not rebolted, and if the flour does not cool, it will be lumpy in the sack.

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Q. 69. Did you ever personally know of any self rising flour put out by Ballard & Ballard that was lumpy?

A. Yes.

Q. 70. That has come under your personal observation?

A. Yes, I have seen a number of sacks of it.

Q. 71. I believe you have just testified that in your opinion good self rising flour cannot be made by having the ingredients placed into the mill stream?

A. That is right.

Q. 72. Mr. Travis, is the reduction of wheat by a grinding mill in your opinion, a blending operation, that is, any milling operation by a grinding mill?

A. Two operations, the wheat berry is broken up and separated into different texture flours and then it is blended together according to the miller's idea of what he wants.

Q. 73. At every milling operation? That is, reducing the wheat involved a blending operation also?

A. For every long system mill operation, of the present modern mills.

Q. 74. What bleaching agents were used by the Washburn-Crosby Company while you were there?

A. We at one time used the Alsop, which is an electrical, a meta-clara or chlorine, and Novadel.

Q. 75. They use the Alsop, Chlorine and Novadel?

A. Yes.

Q. 76. What bleaching agents are used by the Liberty?

A. Agene and Novadel.

Q. 77. What is the effect of the bleaching agents?

A. Matures the flour, does in a short time what it would take longer to do, over four or five weeks, something like that.

Q. 78. Does it improve the baking qualities in your opinion?

A. Yes, sir.

Q. 79. Now you spoke of the Washburn-Crosby Company, and I believe the Liberty, using the paddle test, is that a valuable test in your opinion?

A. Yes.

Q. 80. Well, it does not show of course the amount of protein or the amount of starch in the flour, but what does it show?

A. It shows the dress and the color of the flour.

Q. 81. Are those important items?

A. Very important.

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Q. 82. You say that is used in all mills that you have had experience with?

A. Every miller that I have ever seen has a click and paddle with him.

Q. 83. What do you mean by a patented flour, Mr. Travis?

A. That is generally the starchy flour, the lower extraction of flour.

Q. 84. Is there any set definition of a patented flour?

A. None that I know of.

Q. 85. That varies with each mill?

A. Yes.

Q. 86. As I understand you, it is the patented flour, the one that runs to starch rather than protein or mineral matter of the wheat, is that correct?

A. The shorter the patent the lower the protein and the higher the starch.

Q. 87. What do you mean by low grade flour?

A. Low grade is generally referred to as the flour that comes after the—low down in the mill after the last reduction.

Q. 88. Does that contain or not contain more of the mineral matter, more of the protein content of the wheat berry?

A. It does, it is higher in both ash and protein.

Q. 89. The low grade flour is higher in both ash and protein than the patent flour?

A. Yes.

Q. 90. Which runs to starch?

A. Yes.

Q. 91. Does it cost any more to make a patent flour than it does a low grade?

A. No, all made out of the same wheat, and on the same mill, in the same way.

Q. 92. The same operation?

A. And the same operation.

Q. 93. Is low grade flour a sound flour?

A. Just as sound as any, if it is made out of sound wheat, just as sound as the patent flour.

Q. 94. Do any people prefer low grade flour for biscuits and things like that, that you know of?

A. Yes.

Q. 95. Do you know what pearl meal is?

A. Yes.

Q. 96. Well, is that or not the meal with practically all of the corn hearts taken out of it?

A. Yes, that is the ido sterm, the hard flaky part of the corn.

Q. 97. That makes white corn bread?

A. Yes, sir.

Q. 98. Some people prefer that?

A. Yes.

Q. 99. Others prefer the water ground meal that has the hearts in it?

A. That is right.

Q. 100. Mr. Travis, I understood Mr. Whiting to say that he had never known of a single instance where Ballard and Ballard, if their flour did not happen to be absolutely uniform, fed it back into the mill. What about the practice of Washburn-Crosby if you know, whether or not they fed the flour back in the mill?

A. Yes.

Q. 101. Why would that happen?

A. It would happen for a number of reasons. We always had to keep back, sometimes as much as four or five hours' run, when we would start up the mill, and it was cold, it would not begin milling until it was warmed up all the way through, and then a bolting cloth might develop a hole, and all of the stock goes through to the wrong place.

Q. 102. Could specks in your flour from the hole in your bolting cloth cause that?

A. Yes, not make the proper separation, that flour had to be fed back, at least we fed it back. We did not send it out to the trade.

Q. 103. Does the Liberty Mill do the same thing?

A. Yes.

Q. 104. You consider that good practice in milling trade?

A. If you want uniform flour you have to do it.

Q. 105. Mr. Travis, the Liberty Mills, are they a member of the Southeastern Millers Association?

A. Not now.

Q. 106. They were members?

A. Yes.

Q. 107. And the Washburn Crosby Company were members while you were with them?

A. Yes.

Q. 108. While you were running the Liberty Mills, I will ask you if you were sent on account of that mill's membership in the Southeastern Millers Association, a pamphlet entitled, "A Survey of Flour Distributions in Alabama, and Georgia, Southeastern Millers Association"? Did you receive such a pamphlet?

A. Yes.

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Q. 109. Can you identify the bound pamphlet of sheets, now handed you entitled "A Survey of Flour Distributions in Alabama and Georgia, Southeastern Millers Association," as the pamphlet to which you have referred?

A. That is the one.

Mr. Malone: I would like to offer that Mr. Examiner, as Respondent's Exhibit.

Mr. Bane: What is the purpose of this, if I may ask? I presume the Southeastern Millers Association is supposed to render some service to its members, since they are engaged in the flour business and a survey of the flour sales or flour demand in any particular territory strikes me as one thing you would expect of the Association, and its members would have the right to expect. I do not see, for instance the present letter—

Mr. Malone: It has some statistics in there that we think will bear on the case. For instance, how customers ask for flour, just a general survey all over the south.

Mr. Bane: I do not see, Mr. Examiner, certainly a great deal of this is absolutely immaterial, from what I have looked at, it is a pamphlet, I cannot undertake to read it all, but I see nothing in here, certainly which has any bearing on this case. Certainly the first letter from Mr. Sample, transmitting it, has no bearing on the case. Nothing in here, unless pointed out is relevant. For instance, "Population of the Metropolitan District of Atlanta is 334,000," et cetera. I do not see how that has any bearing on this case. Those are the kind of pamphlets seemingly.

Mr. Malone: It shows many other things, how much plain how much self rising—

Mr. Bane: What has that to do with the case, what is the use of cluttering up the record with that whole booklet, you have to read it all.

Examiner Sheppard: If there is anything special you want to put in on your case, if you will indicate it on examination.

Mr. Malone: I will read it into the record.

Mr. Bane: Yes, but why put the whole book in?

Examiner Sheppard: Just mark certain portions that you want me to consider. I will give you an opportunity to look through it and indicate to me what you want to introduce. Now, if you want to offer

certain pages—

Mr. Malone: The first is a letter headed June 26th, 1929, at the top, "Southeastern Millers Association, Nashville, Tennessee," and the letter then reads:

"Special Welfare Committee,
Southeastern Millers Association,
Nashville, Tennessee.

Gentlemen:

"Pursuant with instructions issued to your Committee, I have made investigations of flour distribution conditions in sections of Alabama and Georgia, assuming that conditions existing in such sections are typical of conditions existing in the Southeastern territory. The investigations covered large and medium sized cities, towns, villages, and country stores, hence should be representative of all types handling flour.

"Questionnaires were presented to jobbers, retail dealers and housewives, and in a majority of instances the parties approached readily replied. I endeavored to avoid suggestions or anything that would influence the answers, and while it is quite probable that some of the statements are lacking in accuracy, I do not believe that any one deliberately misrepresented conditions, and the information found in the following pages may safely be taken as a picture of conditions as they now exist.

"Respectfully,

"J. W. Sample,
"Secretary."

Mr. Malone: That is signed, J. W. Sample, who is Secretary of the Association. And the next point is from the table with respect to Athens and Cullman, Alabama, "How women ask for flour":

How Women Ask
For Flour—2 Soft Wheat; 13 by brand name; 0 by mill name.

The next is from the table with respect to Atlanta, Georgia:

How Women Ask
For Flour—1 Soft Wheat; 80 by brand name; 1 by mill name.

The next with respect to the Birmingham territory:

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How Women Ask
For Flour—7 Soft Wheat; 44 by brand name; 0 by mill name.

The next is with respect to the Central Georgia territory:

How Women Ask
For Flour—3 Soft Wheat, 45 by brand names; 0 by mill name.

The next with respect to the Rome, Georgia territory.

How Women Ask
For Flour—0 Soft Wheat; 10 by brand name; 0 by mill name.

I also will read the following at the close, the closing page of the pamphlet:

"Consumption Self-Rising Flour—Averaging the entire territory, it appears that the consumption of plain and self-rising flour is about equally divided. Northern Alabama uses very little self rising; Birmingham District uses three times as much as the Agricultural Territory farther north; Montgomery uses more than Birmingham, the consumption being fifty-five percent of plain and forty-five percent self-rising, and in the southern part of Alabama, we find self-rising flour slightly in the lead.

"Going over into south Georgia, we find twenty-three percent plain flour, and seventy-seven percent self-rising; Central Georgia, twenty-one percent plain, and seventy-nine per cent self-rising. Atlanta Territory, shows slef-rising with a slight lead, while farther north at Rome, plain flour has a small advantage."

Q. 110. Mr. Travis, what mills compose generally the Southeastern Millers Association, I mean from what States?

Mr. Bane: If Mr. Travis knows. He may be a member, and then not know. I just do not know that he knows.

Q. 111. To the extent of your knowledge?

A. I know Indiana, Illinois, Kentucky, Tennessee, North Carolina, I think that is about all.

Q. 112. Do they sell the same territory that the Nashville blenders sell?

A. Yes, sir.

Q. 113. Is there keen competition between the blenders and so-called millers in that territory?

A. Yes, sir.

Q. 114. The blenders are meeting the prices of the mills in that territory?

A. They must, they sell the same flour.

Mr. Malone: All right, cross examine him.

Cross-examination by Mr. Bane.

X. 1. Are there any mills in the State of Georgia?

A. Yes.

X. 2. Are there any mills in the State of Alabama?

A. Yes.

X. 3. Any mills in the State of Mississippi?

A. None that I know of.

X. 4. Any mills in the State of South Carolina?

A. Yes.

X. 5. Are not those mills in those States members of the Southeastern Millers Association?

A. I don't—there is one now, that I recall in Georgia. I do not think there is any in South Carolina or in Alabama. They are mostly very small operations.

X. 6. Do you know whether or not mills, whether large or small, are members of the Southeastern Millers Association?

A. There are no mills of any consequence as we think of mills, in Alabama. Their is one mill that I know of in Georgia that is a big operation.

X. 7. Is that a member of the Southeastern Millers Association?

A. Yes.

X. 8. When you say a mill of any consequence, what do you mean by that?

A. I mean a miller doing a shipping business, doing other than local trade.

X. 9. How many barrels capacity a day?

A. Generally a mill would have from three hundred barrels up before they did much of a shipping business.

X. 10. Do you mean to say that all of the millers in the State of Illinois are members of the Southeastern Millers Association?

A. No, sir.

X. 11. Indiana?

A. No, sir.

X. 12. Or Kentucky?

A. No, sir.

X. 13. Is not it true that really a very small proportion of the millers of those three states are members of the Southeastern Millers Association?

A. Very small as to number, very large as to number as compared to the total.

X. 14. Is not it true, Mr. Travis, a very small percent as to volume of millers in Illinois are members of the Southeastern Millers Association?

A. Yes.

X. 15. The same thing is true of Indiana?

A. I would not know what the percentage was. When I made that statement I was thinking of the mills who sell into the Southeastern territory.

X. 16. But a great many millers and a great many large mills in Indiana do not sell into the Southeastern territory, aren't there?

A. Yes.

X. 17. Concerns or mills that grind hard wheat?

A. Yes.

X. 18. There are also quite a number of mills, quite a volume of flour ground by such mills in Kentucky that are not members of the Southeastern Millers Association, is not that true?

A. The big mills in Kentucky, I would say that the bulk of the mills doing a business in the southeastern territory, other than a local business, about fifty belong to the southeastern and do not.

X. 19. Take Tennessee, are there not quite a number of mills in the State of Tennessee that are not members of the Southeastern Millers Association?

A. Yes, sir.

X. 20. And that is true in volume of production also, is not it?

A. I think not, doing a shipping business.

X. 21. You think not, doing a shipping business?

A. No.

X. 22. The largest mill in Tennessee is what?

A. The J. Allen Smith, I think has the largest production.

X. 23. What is that known as, the J. Allen Smith Milling Company?

A. I don't know, J. Allen Smith, I suppose it is milling Company.

X. 24. What is the daily capacity?

A. I think they do three thousand barrels.

X. 25. Three thousand barrels daily?

A. Yes.

X. 26. Is that a member of the Southeastern Millers Association?

A. Yes.

X. 27. What is the daily capacity of the Liberty Millls?

A. Eighteen hundred barrels.

X. 28. Eighteen hundred barrels a day? How long has their daily capacity been only eighteen hundred barrels a day?

A. Since it was remodeled four years ago.

X. 29. Four years ago it was remodeled?

A. Yes.

X. 30. Do you know what its capacity was prior to that time?

A. At one time it was five thousand barrels.

X. 31. Were you with them at that time?

A. No, sir.

X. 32. Since you have been with them the capacity has only been eighteen hundred barrels a day?

A. Eighteen hundred barrels a day.

X. 33. Is that the second largest mill in Tennessee?

A. I think so.

X. 34. That is not a member of the Southeastern Millers Association, as I understand?

A. No, sir.

X. 35. Do you know how many mills in North Carolina are members of the Southeastern Millers Association?

A. I would be afraid to quote from my memory on that, two or three.

X. 36. Not all of the mills there are members, are they?

A. No, sir.

X. 37. When did Mr. McCarthy become President of the Liberty Mills?

A. On the 15th of December.

X. 38. December 1929?

A. Yes.

X. 39. He was in no way connected with the Liberty Mills prior to that time, was he?

A. No, sir.

X. 40. Does he own any stock in the Liberty Mills now?

A. I could not say.

X. 41. Why did you leave the Washburn-Crosby Company?

A. A better opportunity here, I thought.

X. 42. Did you resign?

A. Yes.

X. 43. You had been offered the place at the Liberty Mills before you resigned?

A. I had been negotiating with them, yes.

X. 44. What kind of flour did Washburn-Crosby sell in the southeastern territory?

A. They sold mostly soft wheat flour.

X. 45. They grind soft wheat flour up there at Louisville?

A. Both soft and hard.

X. 46. Both soft and hard at the Louisville place?

A. Both soft and hard.

X. 47. Did the Washburn-Crosby Company make self-rising flour?

A. Yes.

X. 48. Sell that in the southeastern territory?

A. Yes.

X. 49. What was the capacity of the plant of the Washburn-Crosby Company at Louisville that you were manager of?

A. Flour, fifteen hundred barrels.

X. 50. Fifteen hundred barrels a day?

A. Yes.

X. 51. That was both hard and soft wheat flour?

A. Or either.

X. 52. Which did you grind the most of there?

A. Soft wheat.

X. 53. About what proportion?

A. Well, that varied. It was about seventy-percent soft and thirty hard, somewhere in there.

X. 54. Is the Washburn-Crosby Company still selling in the southeastern territory?

A. Yes.

X. 55. From Louisville, Kentucky?

A. Yes.

X. 56. Still operating that plant up there?

A. Yes.

X. 57. You spoke of the costs of Washburn-Crosby Company, and the Liberty Mills. When you figure the costs which you said you did, I think?

A. Yes.

X. 58. What did you include in the cost?

A. All items of expense in arriving at total costs.

X. 59. All items of expense?

A. Yes.

X. 60. That would include all salaries?

A. Yes.

X. 61. All commissions?

A. Yes.

X. 62. All costs for raw materials, fuels, et cetera?

A. The raw materials costs is figured aside from the manufacturing and selling cost.

X. 63. But, that is in the total cost?

A. Yes.

X. 64. And then you added money for interest, didn't you?

A. Yes.

X. 65. Depreciation?

A. Yes.

X. 66. Obsolescence?

A. Yes, maintenance.

X. 67. Maintenance?

A. Yes, and power.

X. 68. Fuel?

A. Elevator expense, carrying the wheat.

X. 69. Every element that entered into it, plus interest, depreciation, obsolescence, et cetera?

A. Yes.

X. 70. All of those entered into determining the cost?

A. Yes.

X. 71. In considering the manufacturing cost, Mr. Travis, is not the biggest element labor?

A. That is.

X. 72. That is the biggest element in manufacturing cost?

A. Labor and power, power is a little more than labor.

X. 73. Power in Nashville is a larger element than the labor cost?

A. Yes.

X. 74. That is an unusual situation, is not it? That is not generally true, is it?

A. I think so.

X. 75. It is?

A. Yes.

X. 76. All mills sell the different grades of flour that the mill produces at different prices, don't they?

A. Yes.

X. 77. In other words, the best grade of flour taken from the wheat is sold for a higher price than the second grade; the second grade for a higher price than the third grade that might be taken off; and all those grades are sold for higher price as to grade, than the lower grades, is not that right?

A. That is true, if you grade them according to percentage of extraction, and call the short patent the best flour, that is true.

X. 78. Well, all mills, or practically all mills make more than one grade of flour?

A. Yes.

X. 79. And they all sell those grades at different prices, don't they?

A. Yes.

X. 80. Selling the better grade at a higher price, don't they?

A. Yes, they sell one grade at a higher price.

X. 81. That is what they consider the better grade, sell it at a high price?

A. Yes, that is, they get the most money for it.

X. 82. The one they ask the most money for, is the best grade?

A. I don't know.

X. 83. Am I to understand you mean a mill takes what it considers to be a lower grade of flour, and sells it at a higher price than the higher grades?

A. That is a matter of opinion as to what is the best grade.

X. 84. I am talking about what the mill thinks. It puts out a patent flour and gets more for the short patent flour than for the clear flour?

A. That is because the consumer will pay it.

X. 85. That is what it does?

A. Yes.

X. 86. It gets more for the patent flour than for the straight flour, doesn't it?

A. Yes.

X. 87. Then the mill in determining whether or not its milling operation has been profitable, it considers the percentages of these various grades of flour which it makes and the prices at which it can sell those various grades, and the total return to it, and the total cost of making it?

A. The total cost of the wheat and the total returns.

X. 88. The total cost of the wheat, the expense of grinding it, and the total returns, that is the way to see whether it makes a profit or not?

A. Yes.

X. 89. Because they are varying prices for the different grades of flour?

A. Yes.

X. 90. The sale of a flour by a mill to the so-called blender is rather good business, as a rule, isn't it?

A. It frequently is.

X. 91. It is a rather inexpensive business to obtain, isn't it?

A. Yes.

X. 92. Not much expense connected with selling it?

A. No.

X. 93. When did you stop using the laboratory at the Liberty Mills?

A. It was stopped before I came here.

X. 94. Stopped before you came there?

A. Yes.

X. 95. It is not used now at all?

A. No.

X. 96. I believe you said you used the baking and the paddle tests?

A. Yes.

X. 97. The Liberty Mills has been in continuous operation since you have been there, hasn't it?

A. Yes.

X. 98. Had it been in continuous operation, do you know, before you came with it?

A. It was down—it was in continuous operation for about a year and a half before I came with it.

X. 99. Had it been down for a while before that?

A. For a while, about a year.

X. 100. About a year?

A. Yes.

X. 101. The Liberty Mills is in the hands of receivers, isn't it?

A. No, sir.

X. 102. Are not the banks operating the Liberty Mills?

A. No, sir.

X. 103. The Liberty Mills is not in any financial difficulty.

A. No, sir.

X. 104. How long has it been since it has not been?

A. It has not been since it was bought by the Ford Flour Company.

X. 105. The Ford Flour Company took it over for its debts?

A. No, sir.

X. 106. The Ford Flour Company, is not that operated by a bankers committee that took it over?

A. No, sir.

X. 107. It is not?

A. No, sir.

X. 108. The Ford Flour Company is in no financial difficulty and has not been taken over by the banks, by a Committee of the Bankers or a Committee of Creditors?

A. No, sir.

X. 109. The Liberty Mills has not been taken over by a Committee of Creditors?

A. No, sir.

X. 110. Never has been in the hands of a Committee of Creditors?

A. It has at one time.

X. 111. When?

A. The period I spoke of, it was down for about a year and then sold to the Ford Flour Company. At that

time it was in the hands of Receivers, or a Committee of Bankers, something like that.

X. 112. And did those banks get entirely out of it when they sold to the Ford Flour Company?

A. I don't know.

X. 113. Do not the banks, as a matter of fact, Mr. Travis, control the operation and the management of the Liberty Mills today?

A. No, sir.

X. 114. Did not they retain control of it as security of the purchase price the Ford Flour Company paid?

A. No, sir.

X. 115. Did not?

A. No, sir.

X. 116. And the Banks, and no Creditors' Committee have control of it or a directing voice in the Liberty Mills today, is that what I understand?

A. That is right.

X. 117. And have not had since you have been with it?

A. That is right.

X. 118. Am I to understand that the way the Liberty Mills is run, no test is made on the wheat at the Liberty Mills before it is ground?

A. Yes, we make a test.

X. 119. How?

A. On the experimental mill.

X. 120. You run the various kinds of wheat through the experimental mill?

A. Yes.

X. 121. Then what do you do?

A. Look at that on the slick, paddle.

X. 122. On the paddle?

A. Yes.

X. 123. Without bleaching in any way?

A. Yes.

X. 124. Without putting phosphates or anything in them?

A. Yes.

X. 125. The only way you test your wheat before you grind, you grind, if I understand it correctly, is to run it through an experimental mill and look at the flour?

A. Yes.

X. 126. That is the only test you make?

A. Yes.

X. 127. Then according to that you put your wheat through the regular mill?

A. Yes.

X. 128. Don't you try at the Liberty Mills to get wheat at various concerns and mix it or blend it in your grinding operations?

A. We do get wheat from various sources. We do not set out to do it deliberately, do not pick any certain section to buy wheat from, and say we have to have that kind of wheat, we don't do that.

X. 129. Did you make any effort to blend your wheat, before you grind it?

A. We do blend it all.

X. 130. What wheat do you blend?

A. We blend all the wheat we get, depending upon the kind that we get in.

X. 131. Don't you buy your wheat with that in view? You just blend anything you happen to buy?

A. We buy No. 2 red wheat and No. 2 red wheat is classed different in character, depending upon where it comes from.

X. 132. That is what I thought?

A. Then we determine the character of the wheat we have, one, two and three, we call it, one, two and three.

X. 133. How do you determine that?

A. By color.

X. 134. The color of the wheat?

A. The flour, that it will make. We blend it in that way, one, two and three, classes, in grinding it, by blending those three streams of wheat together.

X. 135. What do you mean by red wheat, No. 2 red wheat, that is not the highest grade, No. 2 Wheat?

A. Yes, No. 2 wheat.

X. 136. No. 1 is a better grade?

A. Yes, No. 1 is a better grade.

X. 137. How many grades of wheat are there that is a better grade than No. 2 wheat?

A. One.

X. 138. That is the only one, No. 2?

A. Yes.

X. 139. The only test I understand you put your wheat through before you blend it, is you always buy No. 2 wheat?

A. Yes.

X. 140. Now, you run it through an experimental mill?

A. Yes.

X. 141. And look at the color of the flour which

comes out from it. Then you decide somewhat the quality of that No. 2 wheat?

A. That is right.

X. 142. And according to the color of the flour you mix them together?

A. Yes.

X. 143. Do you make any effort to get a certain amount of it from one section, to keep the mixture uniform, anything of that kind?

A. We usually manage to do that, yes.

X. 144. Do you make any effort to do it?

A. Not any special effort, because we buy wheat mostly from the country.

X. 145. You do not buy through terminals?

A. Very little.

X. 146. You buy mainly from the country?

A. Mainly from the country.

X. 147. You do not make any accurate effort to keep your product, by blending the wheat, uniform? Is that what I am to understand?

A. Yes, we do make an effort to do so, and succeed.

X. 148. I do not understand just how you can when you go out indiscriminately and buy the wheat in that way, then you divide your No. 2 wheat into three piles as I understand?

A. That is right.

X. 149. That is what you said you do?

A. Yes.

X. 150. This time you may have seventy per cent of third grade, twenty per cent of the second grade, and ten per cent of the first grade; the next operation, it seems to me you might have seventy per cent of the first grade, thirty per cent of the second, and none of the third?

A. No, the wheat comes in, coming from different places, we manage to keep it uniform.

X. 151. Just by chance it hits that way. Have you—

A. If you have enough wheat it will come out that way.

X. 152. Washburn-Crosby I understand use a laboratory?

A. Yes.

X. 153. They test the wheat, also the flour after it comes from the mill?

A. They do not test soft wheat, no sir.

X. 154. They do not test the wheat before it is put in to be ground?

A. No, they did not test the soft wheat at all, not chemically.

X. 155. They tested only the flour after it came out?

A. Yes.

X. 156. They tested that at various times throughout the making operation?

A. Through the day.

X. 157. Various times through the day?

A. Yes.

X. 158. It was also used in addition to these chemical tests, it used the paddle and the baking test too?

A. Yes.

X. 159. How long has the machinery of the Liberty Mills been in use in the Liberty Mills?

A. A part of it a long time, but it was all rebuilt and remodeled four years ago when the Ford Flour Company bought.

X. 160. Quite a good deal of it is very old machinery?

A. Yes.

X. 161. A good deal of it is quite antiquated?

A. No.

X. 162. You would not call the Liberty Mills a modern, up-to-date mill?

A. Absolutely.

X. 163. With the character of machinery it uses?

A. Yes.

X. 164. What do you mean by remodeling the mill?

A. They fixed up the rolls and the cloths in the sifters, got them in good shape, corrugated the rolls and rebabbitted the bearings.

X. 165. Do you know how long the rolls in the Liberty Mills have been used?

A. No.

X 166. Used much longer than before you were there?

A. Yes.

X. 167. Are not those rolls very old?

A. The rolls themselves, I would say most of them are not.

X. 168. A good many of them are?

A. Some of them would be, but they have all been re-corrugated.

X. 169. Have you bought any rolls since you have been there?

A. No, sir; we have had them recorrugated, which then makes a new roll of it.

X. 170. It makes a new roll to a certain extent?

A. To the fullest extent.

X. 171. You have not bought any rolls since you have been there?

A. No.

X. 172. Has the process of milling been changed by the mill?

A. No, sir.

X. 173. I mean the Liberty Mills, of course?

A. No.

X. 174. Does that mill use the long system of milling?

A. Yes.

X. 175. What bleach are you using at the Liberty Mills now?

A. Agene and Novadel.

X. 176. Which do you use the most of?

A. I don't know how to measure it.

X. 177. I thought as a man who was familiar with the operations and management, you could tell?

A. One is a gas and the other is a powder.

X. 178. Let us get your product, that way, measure on that. You bleach your product mostly, the most of your product is bleached with which, Novadel or Agene?

A. It is all bleached with both.

X. 179. All of your product is bleached with both?

A. Yes.

X. 180. In other words you bleach with Agene because it ages the flour better and bleach with Novadel because it gets a little whiter color?

A. No, we do not bleach as heavy as we might with Agene, because it increases the acidity of the flour, and then later it may turn rancid.

X. 181. In other words it matures it quicker and your flour will probably not last as long, is that it?

A. No, I don't think that is it. It is just a gas that acts that way on the fats.

X. 182. In the flour?

A. Yes.

X. 183. Of course that is what spoils the flour?

A. Yes.

X. 184. That is just what I asked before but you would not agree with me. What about Novadel, what do you use Novadel for?

A. We use it to bleach the flour.

X. 185. To give it the white color?

A. Yes.

X. 186. After aging has matured the flour?

A. Both give a white color.

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X. 187. Does not the Novadel give a better white color than the Agene?

A. I think so.

X. 188. That is why you use it?

A. You use one to mature and one to give the white color.

X. 189. Both mature, but in a certain sense Agene is a quicker maturing and the Novadel gets a better color?

A. I don't know.

X. 190. You are not chemist enough to know?

A. No.

X. 191. You know you use both?

A. Yes.

X. 192. Why you happen to use both, don't you have the final choice in these things?

A. Yes.

X. 193. Some reason must have been advanced to you as to why you should do that?

A. On the recommendation of a chemist that I came in contact with.

X. 194. Do you employ chemists out there?

A. No, sir.

X. 195. Do you send any flour or wheat away to commercial chemists to be analyzed?

A. Occasionally we send flour.

X. 196. What do you mean occasionally?

A. Three or four times a year.

X. 197. Is that all?

A. Something like that.

X. 198. I understood you to say so far as the mill is concerned, it cost no more to make patent flour, high grade flour, than it did low grade flour?

A. Yes, that is right.

X. 199. Is not it true, if you probably considered the actual operation, that it cost less to make a patent flour than it did the low grade flour?

A. No, I don't think so.

X. 200. Don't you get your patent flour out sooner than you do the low grade?

A. It comes from a different place.

X. 201. Don't you have to run your low grade flour through more rolls?

A. Not all of it.

X. 202. You do a considerable portion of it, don't you?

A. I do not know whether more of it would go through more rolls or not, I think not.

X. 203. I think you—leave out the "more," some of it does, doesn't it?

A. Yes.

X. 204. It costs less, so far as the actual milling operations is concerned, to make a patent flour than some low grade flour?

A. I don't think so.

X. 205. You don't?

A. No, you have to run all the machinery all the time.

X. 206. Because your patent flour is running off, because you have your mill streams running, is that true?

A. Yes.

X. 207. And you do run some low grade flour through more rolls, it goes through more operations than the patent flour?

A. Some of it.

X. 208. Some of it goes through a great many more rolls than does your short patent flour?

A. Oh, no.

X. 209. Is not your short patent flour taken off the rollings of the middlings?

A. Yes.

X. 210. The middling is one product you get as a result of the first break of the wheat, isn't it?

A. No.

X. 211. How many breaks have you, of your wheat, before you get the middlings?

A. The middlings is the second break.

X. 212. How many break mill is the Liberty Mills?

A. A five break.

X. 213. You get the middlings on the second, or all of the breaks?

A. The second, third, fourth and fifth.

X. 214. The second, third, fourth, fifth breaks you get some middling from each break?

A. Yes.

X. 215. Those middlings are divided in the mill stream from the other breaks, as I understand?

A. Yes.

X. 216. Then they are ground, is that right?

A. Yes.

X. 217. From the first grinding of those middlings what do you get?

A. Get some flour.

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X. 218. Get some flour? What kind of flour do you call that?

A. That would be a patent flour.

X. 219. A patent flour?

A. Yes.

X. 220. A high grade patent flour, wouldn't it be?

A. Yes.

X. 221. All right. There is a high grade patent flour right there, isn't it?

A. Yes.

X. 222. You have gone through the breaks, with one more grinding you have a high grade patent flour, haven't you?

A. Yes.

X. 223. Now, you have some other products there before this high grade patent flour is obtained?

A. You have the middlings that have been reduced in size.

X. 224. And they go through another grind, don't them?

A. Yes.

X. 225. Then you get some more flour and some more called "drift," what do you call it, if you don't call it "drift," roughage or what?

A. Not out of the middlings, that is all flour, just a matter of purifying and reducing them all down.

X. 226. And the result of grinding middlings is flour?

A. Except the scalpings, the specks you get out of it, by aspirating.

X. 227. You do not have any low grade flour coming from the middlings at all?

A. No, nothing but the speck.

X. 228. You do not have any—what do you call it, what do you sell it for?

A. Bran Shorts.

X. 229. The Bran Shorts, you do not have that from the middlings?

A. No.

X. 230. How many times do you grind the middlings?

A. Well, they will be ground five times.

X. 231. Grind five times, after they have gotten to middlings?

A. No.

X. 232. How many times do you grind the middlings?

A. Grind some four times, some three, some two and some only once.

X. 233. You have four sets of rolls you run the middlings by; the first set of rolls you get some flour from the middlings, the second set of rolls you get some more flour, the third set some more flour, and the fourth set you get some flour, is that right?

A. That is right.

X. 234. All is practically high grade flour?

A. Yes.

X. 235. That first comes off is the highest grade patent flour out of the wheat?

A. Out of the middlings.

X. 236. Yes, that is what I mean?

A. No, that is not the highest grade.

X. 237. What is the higher grade?

A. It is the high grade of the middlings.

X. 238. The flour that you get off through this fourth grinding of the middlings is the same grade?

A. They are not the same grade, no.

X. 239. That the Liberty Mills puts in as the same flour?

A. Yes.

X. 240. Practically the same grade?

A. Yes.

X. 241. Do not some mills take off the part of the grinding of the mills, on the first grind, as the better grade flour?

A. I don't know that.

X. 242. A man experienced in the milling business as you are, don't know that?

A. I think all middlings in all mills are the highest grade patent flour.

X. 243. Do not some divide that flour coming off from the middlings as straight patent?

A. I don't think they do.

X. 244. What would you call 47½ per cent flour?

A. That has all the middlings and some more.

X. 245. What do you call thirty-five per cent patent flour?

A. All the middlings.

X. 246. Is all the middlings flour?

A. About all.

X. 247. Not all, it leaves a little bit?

A. Just depending on the wheat you are grinding?

X. 248. Now, let us take the rest of the wheat which has not gone over into the middlings, it has gone through the five breaks, and has not gone through the four roll-

ings of the middlings, that goes into other rolls, does not it?

A. Some of it.

X. 249. Some of it does?

A. We get some flour off the first break.

X. 250. Some flour off the first break?

A. Yes.

X. 251. Some is left which goes through other rolls, doesn't it?

A. Yes.

X. 252. How many rolls do you run that through after you bring it off the fifth break?

A. The low grade?

X. 253. I understand you break the wheat five times?

A. Yes.

X. 254. Then the middlings run over four and the other five grinding processes?

A. Yes, sir.

X. 255. The middlings go into another stream?

A. Yes.

X. 256. The flour, of course, comes off from the first break, that is ground?

A. Yes, we have seven reductions.

X. 257. Seven more reductions, and from each of the reductions you get some flour?

A. Seven altogether, that is, five breaks and seven reductions.

X. 258. Seven reductions as to that, on this other grade of flour?

A. That includes the reduction of the middling flour.

X. 259. But you only reduce the other flour twice, and that which is—in other words, that which does not reduce is not middlings at all?

A. It is offall, or rather the cut-off from the middlings.

X. 260. You do not grind that any?

A. Yes.

X. 261. How many times do you grind that after it is cut off?

A. That will be ground—

X. 262. Seven times, would not it?

A. No.

X. 263. How many times?

A. Different parts of it would be ground all the way from once up to the six other times.

X. 264. Different parts would be ground six times?

A. Yes.

X. 265. On the sixth operation you would get some flour?

A. Yes.

X. 266. That would be a lower grade flour than the flour you would get from the middlings?

A. It is.

X. 267. A lower grade flour you would call it that?

A. Yes, the cut-off.

X. 268. It costs more to make that low-grade flour than the middlings?

A. No.

X. 269. In other words, there is no more expense?

A. You could not make one without the other.

X. 270. I am not talking about that, about making one without the other, I am talking about the cost of the process?

A. That is why I say it could not be made, one without the other.

X. 271. You could make one without the other, you could stop here and only make the middling flour, and sell it at the highest price?

A. No, sir.

X. 272. Why?

A. You do not separate them that way.

X. 273. You told me you had separated the middlings after five breaks?

A. Yes.

X. 274. What do you call it, the offall, what is that?

A. The cut-off, that is all up in the bolters, the rolls, up in the mill.

X. 275. Separated from the middlings, to do that?

A. Yes.

X. 276. You do not have to grind that, that you separate, do you?

A. You have to separate it.

X. 277. All right, you have got it separated, whatever you may get from your middlings, you do not have to grind it, do you, to make the middling flour?

A. Not to make your middling flour.

X. 278. Of course not, not to make high grade flour, but you do go on grinding it?

A. Yes.

X. 279. And put it through more grindings than you do the middlings?

A. A part of it.

X. 280. Don't you put all of it through the other grindings?

A. Some low grade flour comes off at the first break.

X. 281. Of course you will get some flour on breaking the wheat berry the first time?

A. Yes.

X. 281½. Some goes through another operation, then you put the middling flour through?

A. Yes, sir.

X. 282. Is not that bound to cost more?

A. No, I don't think it does. The other operations in the mill, operations other than the actual grinding of wheat, you have the bolting and all of that.

X. 283. You have to sift between each grinding at least, don't you?

A. Yes.

X. 284. So then in rolling this lower grade flour, grinding this lower grade flour you have at least one additional sifting between the first two grindings, two additional siftings?

A. Yes.

X. 285. Two additional siftings with one additional grinding?

A. Yes.

X. 286. That does not cost any more?

A. I don't think so.

X. 287. You don't think so. Does not it take any more power to run that additional roll, to run those additional sifters and bolters than if you did not have them?

A. It is all there, and the little power it would take would not be considerable.

X. 288. It does not make any difference, it costs at least, don't you?

A. Yes.

X. 289. Yes, it costs as much, doesn't it?

A. Yes.

X. 290. You will admit that much, won't you?

A. Yes.

X. 291. It costs at least as much, yet you sell it for a much lower price, don't you?

A. Yes.

X. 292. Figuring whether you are making a profit or not, you figure the total operations out of the wheat?

A. Yes.

X. 293. That is the way you determine whether or not you are selling flour at a profit or a loss?

A. Yes.

X. 294. What changes have there been in the milling operations since you left the Washburn-Crosby Com-

pany? Have there been any improvements in the kind and character of rolls you use?

A. None that I know of.

X. 295. At least the Liberty Mills have not put in any, have they?

A. No, sir.

X. 296. Do you know whether or not this pamphlet referred to by Mr. Malone in his examination of you and from which he made some selections, and which he had placed in the record, do you know whether or not it contains all of the pamphlets on this particular report, sent out by the Southeastern Millers Association? Do you know whether it is complete or not?

A. It was.

X. 297. It was?

A. Yes.

X. 298. What do you mean, was when?

A. When I last looked through.

X. 299. Did you give it to Mr. Malone personally?

A. No, sir.

Mr. Bane: Do you have any objection, Mr. Malone, if I have the reported copy in from this, rather than consume the time of reading it, certain parts from each of the Districts that are reported here, the report that they show here as to the quality of flour desired by housewives?

Mr. Malone: Read in anything you want.

Mr. Bane: I will give it to him and let him copy to save time, let him copy from the book. He can find it under that heading.

Mr. Malone: Have you indicated them?

Mr. Bane: Copy in the report under, "Quality of Flour desired by Housewives."

Mr. Malone: That is all right.

(Said extracts from the pamphlet referred to are in words and figures following:

Athens & Cullman, Alabama, District.

Quality of Flour Desired
by Housewives—10 say majority want highest quality;
4 say majority want average quality;
1 says trade equally divided.

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Atlanta District

Quality of Flour Desired
by Housewives—31 say majority want highest quality;
45 say majority want average quality;
14 say trade equally divided.

Birmingham District.

Quality of Flour Desired
by Housewives—26 say majority want highest quality;
19 say majority want average quality;
3 say trade equally divided.

Montgomery District.

Quality of Flour Desired
by Housewives—17 say majority want highest quality;
5 say majority want average quality;
6 say trade equally divided.

Central Georgia District.

Quality of Flour Desired
by Housewives— 7 say majority want highest quality;
36 say majority want average quality;
5 say trade equally divided.

Rome, Georgia, District.

Quality of Flour Desired
by Housewives— 6 say majority want highest quality;
2 say majority want average quality;
2 say trade equally divided.

Mr. Bane: And then copy in from each District what is reported under the heading, "The willing to pay more and get flour known to be of finest quality."

(Said extracts from the pamphlet referred to are in words and figures following):

Atlanta District.

Willing to Pay More and Get Flour
Known to be of Finest Quality—61 yes; 7 no.

Birmingham District.

Willing to Pay More and Get Flour
Known to be of Finest Quality—49 yes; 8 no.

C. J. Travis

Montgomery District.

Willing to Pay More and Get Flour
Known to be of Finest Quality—29 yes; 2 no.

South Alabama District. Dothan and Troy.

Willing to Pay More and Get Flour
Known to be of Finest Quality— 7 yes; 2 no.

Waycross, Etc., Georgia.

Willing to Pay More and Get Flour
Known to be of Finest Quality—32 yes; 5 no.

Macon, Georgia, District.

Willing to Pay More and Get Flour
Known to be of Finest Quality—15 yes; 9 no.

Mr. Bane: And then copy in from each District, what is reported under the heading, "Factors Influencing Section of Brands (A, B, C, D and E order of Importance)."

(Said extracts from the pamphlet referred to are in words and figures following:)

Atlanta District.

Assurance Pure and Wholesome.	Produce Light Flavory Baking.	Reputation of Mill Making It.	Recommendation of Dealer.	Reasonable Price.
A—35	A—28	A— 4	A— 4	A— 4
B—19	B—15	B—24	B—10	B— 6
C—12	C—27	C—10	C— 6	C—15
		D—14	D—15	D—23
		E— 9	E—22	E—14

Birmingham District.

A—36	A—27	A— 0	A—1	A— 8
B—17	B—39	B— 3	B— 8	B— 5
C— 8	C— 6	C— 4	C—34	C—19
D— 4	D— 1	D— 4	D—15	D—10
E— 1	E— 1	E—21	E— 2	E—14

Montgomery District.

Factors Influencing
Selection of Brands: 49 Assurance that it is pure and wholesome.
59 Confidence that it will produce light, flavory bakings.

C. J. Travis

1 Reputation of mill that makes it.
3 Recommendation of Dealer.
2 Ability to buy at reasonable price.

Dothan and Troy District.

Assurance Pure and Wholesome.	Produce Light Flavory Baking.	Reputation of Mill Making It.	Recommendation of Dealer.	Reasonable Price.
A—22	B— 2	C— 1	C— 6	C—15 D— 1

Waycross District.

A—38	A— 1	A— 0	A— 6	A— 1
B— 3	B—39	B— 3	B— 1	B— 3
C— 3	C— 4	C— 2	C—20	C—17
D— 0	D— 1	D— 0	D—10	D—12
E— 0	E— 0	E— 0	E— 1	E— 1

Macon District.

A—21	A— 8	A— 0	.....	.....
B— 4	B—20	C—23	.....	.....

(At this point there ensued further cross-examination with reference to matters which were later by agreement of counsel and all parties, bodily stricken from the record. The hearing then at 4:30 o'clock P. M. adjourned until ten o'clock A. M. January 16th, 1930.)

Docket No. 1601.

Nashville, Tennessee, January 16, 1930.

Met, pursuant to adjournment, at 10:00 o'clock A. M.

Appearances:

Baldwin B. Bane, Attorney for the Commission.
Thomas H. Malone, Jr., Attorney for Respondents.

Before:

William W. Sheppard, Examiner.

Examiner Sheppard: Are you ready?

Mr. Bane: Yes, Mr. Examiner. In lieu of the testimony from Mr. Travis on cross-examination on yesterday, the latter part of his cross-examination, with reference to his connection with the Dollar Flour Mills, it is stipulated between counsel that all of his testimony with reference to the Dollar Flour Mills on yesterday shall be bodily stricken from the record, that means, shall not be written up, and in lieu thereof, this stipulation:

That Mr. Travis, personally, did on September 18th, 1929, send out to the trade circulars soliciting flour business in the name of Dollar Flour Mills; that he sent out another such circular under the same name to the flour trade, soliciting flour orders on September 24th, 1929; that he resigned from the Southeastern Millers' Association on September 25th, 1929; that the Dollar Flour Mills does not own or operate any mill grinding wheat into flour, and in fact owns and operates no plant whatsoever; that orders for flour are still being solicited from the trade by the Dollar Flour Mills.

Mr. Malone: That is satisfactory.

Examiner Sheppard: Mr. Malone, do you want to add anything?

Mr. Malone: No, sir.

Examiner Sheppard: You agree in the stipulation?

Mr. Malone: I agree to the stipulation.

Examiner Sheppard: Mr. Reporter, you are authorized when you come to write up the record, to strike bodily from the record, and I mean to say you are not to transcribe your notes on the cross-examination of Mr. Travis on yesterday, from that part of the testimony which has just been indicated by Mr. Bane, and which you can locate and recognize when you get to it. After you have stricken that, you can incorporate into the record the stipulation itself.

V. S. TUPPER, was thereupon produced as a witness, and having been duly sworn, testified as follows:

Direct Examination by Mr. Malone.

Q. 1. Your name is Vernon S. Tupper?

A. Yes, sir.

Q. 2. Where do you live, Mr. Tupper?

A In Nashville.

Q. 3. What is your occupation?

A. Secretary and General Manager of the Nashville Roller Mills.

Q. 4. That is a plant situated in Nashville, Tennessee?

A. It is.

Q. 5. In what business is that plant engaged?

A. In the processing of flour, and in the manufacture of self-rising flour.

Q. 6. Are you a defendant in a similar proceeding to the pending case here?

A. Yes, sir.

Q. 7. Mr. Tupper, the representative of the Trade Commission, Mr. Horton, visited Nashville and made inquiries of you and other firms or corporations engaged in the same business with regard to the use of the name "mills," etc., did he?

A. He made inquiries of me and I was informed by others in this same proceeding that he had made similar inquiries of them.

Q. 8. Did you give him any information that he requested?

A. I did, sir.

Q. 9. Did you furnish him with a list, or furnish the Federal Trade Commission with a list of customers at their request?

A. I did so.

Q. 10. Examine the letter now handed you on the stationery of the Federal Trade Commission of Washington, D. C., under date of February 25th, 1928, addressed to the Nashville Roller Mills, attention Mr. D. V. Tupper, file No. 1-2658, and state whether you received that letter in due course of mail?

A. I did.

Mr. Malone: Please mark that letter as an exhibit.

(Said letter was then marked for identification, Respondent's Exhibit 68.)

Mr. Malone: This is offered, Mr. Examiner, as Respondent's Exhibit 68.

Examiner Sheppard: Any objection?

Mr. Bane: None at all.

Examiner Sheppard: Let it go in.

(Said letter was then received in evidence as Respondent's Exhibit 68.)

Mr. Malone: It is stipulated that a similar letter was written on behalf of the Federal Trade Commission to each of the respondents in the cases similar to the one now pending, and that pursuant to each of the respondents furnished a list of customers, and that all or some of the witnesses examined on behalf of the Federal Trade Commission in its case in chief were taken from those lists, the lists to be checked and statement to be hereafter made, whether any names of merchants examined on behalf of the Commission appear whose names do not appear on those lists.

Mr. Bane: That is all right.

Q. 11. Mr. Tupper, give us briefly, the history of the Nashville Roller Mills?

Mr. Bane: I am also willing, unless you want to examine on that, I understand that you desire and I do, in saving time and saving of expense to the respondents, your clients, and the commission, too, to stipulate the facts with reference to each of these other respondents, to stipulate in any part of the record made in this particular case that either side wants or thinks it will desire in each of those other cases. Now, if there is any history of Mr. Tupper's plant in that it differs in any way, his process differs in any way from that described by Mr. McCarthy, the way he carries on his business, I am perfectly willing to include that same thing is true of him or any of the other respondents, on showing me that to be a fact. We will stipulate with reference to each of the particular cases, in other words, stipulate exactly what they do, what they are and stipulate any part of the record you or I might want, stipulating that the testimony of such and such witnesses in Docket No. 1601 shall be considered as testimony in that particular case.

Mr. Malone: I will confer with my clients in the other cases on this matter and will announce before

closing this case their attitude in that matter. I have not had the opportunity to confer with them on that point as yet.

Examiner Sheppard: All right, sir.

Q. 12. Mr. Tupper, I wish you would describe briefly for us the manufacture of self-rising flour?

A. Flour and the soda, salt and phosphate, the soda and phosphate making up the leavening ingredients and salt the seasoning ingredient, and the flour, of course, the main body of the article, are brought to the machine known as the self rising flour, batch mixer. They then introduced into this mixer, the different items in proper proportion, and then the mixture is subjected to the action of spirals, baffle plates, so as to effect a thorough mixture, and after processing from ten to twenty minutes, depending on the manufacturer, some using a shorter period and some a longer period, between ten and twenty minutes, it is discharged by opening a valve into the spout, and transferred in that way from the mixer to the screw conveyor, and elevated through elevator belts to the third floor, the first action having taken place on the first flour, and there discharged into the elevator head, and into reels for further refining, and processing; from the reels bin into the packing machinery and thence that hopper bin into the packing machinery and thence into the final package ready for marketing.

Q. 13. How long have you been engaged in the flour business, Mr. Tupper?

A. Since 1903.

Q. 14. You have operated a grinding mill, have you?

A. Yes, sir.

Q. 15. And you have for years operated this self-rising flour plant?

A. Yes, sir.

Q. 16. About how long have you operated that?

A. Simultaneously since 1903.

Q. 17. In other words, your original plant was both a grinding plant and a self-rising flour plant?

A. Yes, sir. Let me be a little more accurate on this as to the extent of time. I was occupied as a clerical assistant from 1903 to 1908. It has only been since 1908 that I, myself have had actual supervision of operations.

Q. 18. Mr. Tupper, is it your observation that running flour through the machinery in the manner you have described, changes its nature or quality in any way?

A. In my opinion, and that is all that I can give, it

makes it fluffier, and it developes an improvement in the texture of the flour that is desirable.

Q. 19. Now, describe briefly the manufacture of what I have been alluding to as processed flour, it possibly might be called phosphated flour, I believe that is Mr. Whiting's term for it, tell us about that?

A. The flour is brought to the flour mixture as I have described in regard to self-rising flour, and in the same way a certain proportion of phosphate is introduced into the mixer along with the flour, and it goes through exactly the same process, being mixed thoroughly between ten and twenty minutes, depending on the man in charge of the machines, the time varies. It is then discharged through the open valve for sifting, to the screw conveyor, then up the elevator to the head of the elevator on the third floor, thence to be discharged to the reels, where it is refined further, then to the hopper or bin, then to the packing machinery, then to the sacks for market.

Q. 20. Do you combine more than one kind of flour?

A. In the greater number of instances, yes.

Q. 21. What is the purpose of that?

A. The purpose of that is to develop in the finished product a flour that combines the necessary traits to give satisfaction to the consumer.

Q. 22. And if I understand you, the finished product then differs in its traits and properties from any one constituent that went into it?

A. Obviously so.

Q. 23. In other words, you combine the high protein with low protein, and get a flour that has a protein content absolutely different?

A. Different entirely.

Q. 24. From either one?

A. Yes, sir.

Q. 25. And in that way you make your different grades, just as you choose to make them?

A. That is true.

Q. 26. There has been some discussion of manufacturing in this case. Just for convenience at this point will you read into the record the definition of "manufacturing" from the Standard Dictionary?

Mr. Bane: Mr. Examiner, I really do not think, unless it is laying the basis for another question, that is material. We will take notice of what is in the dictionary.

V. S. Tupper

Examiner Sheppard: Go on and tell, to save time in looking it up.

A. This I am quoting from the Century Dictionary, which in turn is quoted from Bouvier's Dictionary of legal terms and phrases, as to the meaning and definition of the word "manufacture."

"Commonly the term manufacture means the production of articles for use from new or prepared materials by giving to these materials new forms, qualities, properties or combinations, whether by hand labor or by machinery."

Examiner Sheppard: What is that from?

A. The Century Dictionary, quoted from Mr. Bouvier, the recognized authority on legal terms and phrases.

Q. 27. Mr. Tupper, some reference has been made in this case to the milling in transit case tried before the Interstate Commerce Commission in 1916. Were you actively engaged in that case?

A. I was.

Q. 28. Mr. Tupper for the convenience of the examiner, I am going to read from the advance sheets of that decision, entitled, "Investigation and Suspension Docket No. 789. Nashville Flour Transit rules decided October 17, 1916:

"It is obvious that in its last analysis this case represents a contest between what, for the purpose of designation, may be designated as the 'manufacturers' and 'millers' of self-rising flour, with the carriers divided and lined up, some with each faction. The issue which they have very fully presented and asked us to decide is:

"Does the process of bringing in plain flour, adding and mixing the ingredients referred to and sending out self rising flour, constitute the equivalent of, and entitled the manufacturer to the same transit provisions accorded the miller who draws in wheat, grinds it into flour, adds the ingredients and sends out the product in question; and is unjust discrimination within the meaning of the act to regulate commerce, effected by the action of the carriers serving both of these classes of industries in withdrawing from or refusing to extend these provisions to the one while according the same to the other."

Examiner Sheppard: That is taken from the opinion?

Mr. Malone: That is from the opinion in the case.

Examiner Sheppard: Of the Interstate Commerce Commission.

Mr. Malone: Yes, sir.

Mr. Bane: Now, Mr. Examiner, I will object to that thing there, and all this line of examination here, because, while I do not think that the Commission held all the respondents are contending, a decision for rate making purposes only, as to what was or what would be considered for such purposes a manufacturer or manufacturing process, is in no sense an authority or in no sense even a precedent for a ruling as to what is a manufacturer or what is a manufacturing process in a proceeding of this kind.

Examiner Sheppard: Yes, I presume, Mr. Malone, you know that is a fact, that the Commission is the party here whose decision is paramount in this case, and while I am going to let you put in the record that part, and give it probative value, yet what Mr. Bane has just said is true.

Mr. Malone: I understand, of course, Mr. Examiner, that the Commission must decide the case for itself and will not be controlled, but this is cited as persuasive authority in the holding of another Federal tribunal that seems to me to shed some light.

Q. 29. Now, I will ask you if the opinion contained this further statement:

"It is admitted to be impossible for a miller to place in the hopper of his mill the wheat and the leavening ingredients, the phosphate, soda and salt, and by the process of grinding turn out self-rising flour. The wheat must be ground, and flour, its principal, among other products, obtained. A separate and additional process is then necessary and performed by adding and mixing the ingredients in the proportions previously outlined, in order to secure the self-rising article.

Examiner Sheppard: That is taken from the same opinion?

Mr. Malone: The same opinion, yes, sir.

Mr. Bane: The same objection.

Examiner Sheppard: Let it go in under the same ruling as above.

V. S. Tupper

Q. 30. Mr. Tupper, you personally attended the hearing in that case, did you not?

A. I did so.

Q. 31. In that case, was proof introduced as to whether self-rising flour was or was not a milling or manufacturing operation?

A. Yes, sir.

Mr. Bane: Of course the record of what was introduced, is the best evidence, Mr. Examiner.

Examiner Sheppard: Yes, the record itself is the best evidence, but I will let Mr. Tupper tell me as he has.

Mr. Malone: It is a very large record, and very inconvenient for us to do that.

Examiner Sheppard: All right.

Q. 32. I will ask you if the opinion contains the following, page 488 in the advance sheets. I imagine it is the same in the report—"Practically all of the millers of grain located in the territory east of the Mississippi and south of the Ohio and Potomac rivers, including some situated west and north thereof are voluntarily banded together under the name of the Southeastern Millers Association, which has intervened in this proceeding in behalf of those carriers opposed to extending and proposing to withdraw any granted transit provisions from the manufacturers enjoying and desiring to secure them, and it is not denied that the officers and members of this organization have endeavored to the extent of their power to influence this attitude about the filing of the tariffs here under suspension."

Mr. Bane: I do not see what that particular quotation has in any way to do with the case at all. It tends to prove no fact, or even what they held. It is an opinion or conclusion of that commission as to why the Southeastern Millers Association intervened. I cannot see any pertinency whatsoever, even an I. C. C. holding in that could have.

Mr. Malone: It shows the attitude.

Mr. Bane: Shows what?

Mr. Malone: The attitude, and I am going to ask Mr. Tupper personally if he was present and knows anything about that, just to follow that up.

Mr. Bane: Just a moment, please. It shows what the Interstate Commerce Commission concluded to be the attitude of the Southeastern Millers

Association in that particular proceeding. It cannot in any way be used to determine what, if it were relevant, and it is not, what the attitude of the Southeastern Millers Association in this proceeding is. The attitude of the Southeastern Millers Association has not got anything to do with it, and that does not even tend to prove the attitude of the Southeastern Millers Association. We are not to determine rates and we are in no way attempting to take away from these blenders or mixers, whatever rates or advantages they may have, except such rates or advantages that they get from the use of the word "mill" or "milling" in their name, so as to lead buyers to believe they actually grind the wheat into flour, that is the limit of this commission. We are not trying to take any freight advantages away from them, or alter or change them in any way.

Mr. Malone: The purpose, Mr. Examiner was along the line of our defense, that this is essentially a combat between the two factions over business in which the public is not interested, and this is to show the antagonism even at that date, and what was considered a very important privilege of the self-rising people, to show that they were fighting them even that far back. We think it is relevant in that connection.

Mr. Bane: Mr. Malone, one of my very best friends today was a kid that used to beat the thunder out of me some years ago. His attitude has changed. The Southeastern Millers Association may have changed. It has no bearing whatsoever.

Examiner Sheppard: I agree with Mr. Bane, that the only issue in this case, Mr. Malone, is simply the question of the word "mill" or "milling" in the trade name. And while I am going to let that stay in for the purpose of this case, I want to register my support of Mr. Bane's objection.

Mr. Malone: That, of course, is eventually a matter that the Commission will have to decide.

Examiner Sheppard: Yes.

Mr. Malone: If Mr. Bane is right, the Commission will so decide.

Q. 33. I will ask you one more question along that line. Do you personally know that Mr. J. B. McKemon, then President of the Southeastern Millers Association, was active in that trial attended the sessions and was active against the Nashville Self-rising manufacturers?

A. He was.

Mr. Bane: I do not see that that has anything to do with it, Mr. Examiner.

Examiner Sheppard: No.

Mr. Malone: That is the same ruling, I understand.

Examiner Sheppard: Yes, I will let you take it on up.

Q. 34. What is meant by the "any quantity privilege," just to make the record clear for the examiner on that point?

A. It is the system of freight rates that applies equally to car lot or less than car lot quantities, and hence is called the any quantity freight rate.

Q. 35. Why was that important to the Nashville manufacturers of self-rising flour?

A. Because it enabled them to get their product to the merchant and finally to the consumer at a much lower figure, substantially lower figure than what would have been the case had they been restricted to shipment in carlot quantities.

Q. 36. I am not a rate expert, they are always Greek to me. Let me see if I have it in mind. The wheat grinding mills could ship in wheat here, turn it into flour and then turn that into self-rising flour and ship that out into the southeastern territory on the through rates instead of the sum of the two rates, and do that in any quantity shipment?

A. That is true.

Q. 37. Less than car load, or more than car load, any quantity?

A. Yes, sir.

Q. 38. Now, some of the railroads, while according the wheat millers that privilege, were attempting to take the same privilege from the so-called Nashville blenders or makers of self-rising flour?

A. Yes, sir.

Q. 39. Who, instead of grinding their flour, brought it in and then added the leavening ingredients by the manufacturing process, as I call it at least, which you have described and were shipping it out in any quantity?

A. That is true.

Q. 40. And the Commission restrained the carriers from taking that attitude, and held in substance that the so-called blenders, or as they call them there, were manufacturers of self-rising flour as contra-distinguished from

millers, that those so-called manufacturers were entitled to ship out their flour in any quantity on this through rate into the southeastern territory?

A. Yes, sir.

Q. 41. Is that correct?

A. That is correct.

Q. 42. You have reminded me that Mr. Ballard, President, I believe of Ballard & Ballard, of Louisville, also attended the sessions in this transit case, and was active in the proceedings on the side opposed to the Nashville manufacturers, is that correct?

A. That is correct. I think he was President of Ballard & Ballard at the time, he was an executive.

Q. 43. Mr. Tupper, when was this case?

A. That was 1916.

Examiner Sheppard: You have had the benefit of the preferential rate since that time?

A. Yes, sir.

Mr. Bane: You had it before, didn't you?

A. Yes, sir.

Examiner Sheppard: All right, Mr. Malone, go ahead.

Q. 44. Does that any quantity privilege in any way benefit the small merchant in this southeastern territory?

A. Obviously so, it gives the flour to him on the basis of the through rate, rather than on the higher rate made by the two locals from the point of origin up to Nashville and Nashville on to destination.

Q. 45. Well, small merchants, like some of the ones that have been examined in this proceeding, are they able to buy a car of flour?

A. Not that I know of. That would seem unreasonable to think that they could.

Q. 46. Is not it a fact that they even buy as little as two to five barrels in a shipment?

Mr. Bane: How many barrels are there in a car?

A. Any where from 125 up to in some cases, has to be 210 barrels, to take care of the minimum requirements of a 40,000 pound car.

Q. 47. Now, if I understand you, these small retailers are in that way enabled to get their flour direct from the manufacturer, that is, the self-rising manufacturer,

and at a rate lower than if they had to pay the combination of the two rates, whatever they might be, or buy it from the jobber and pay him his profit?

A. Yes, sir.

Q. 48. And that saving in turn is reflected to the flour consumers in your territory?

A. That would be the reasonable conclusion.

Mr. Bane: Or to the blenders in this territory?

A. I did not catch the question.

Mr. Bane: Or to the blenders, the saving is reflected to the consumers or the blenders?

A. The competition is about the hardest imaginable. If the blenders could take it, they would, but the competition is entirely too vicious.

Q. 49. Mr. Tupper, on that point of manufacturing, do you know or have you any correspondence with the Census Bureau as to how you should be classed?

A. Yes, sir, I have a letter from them, defining my status as a re-manufacturer.

Q. 50. I hand you a letter on the stationery of the Department of Commerce, Bureau of the Census, Washington, under date of February 1st, 1928, addressed to the Nashville Roller Mills, the Red Mill, etc., attention V. S. Tupper, General Manager, signed W. A. Ruff, acting Chief Field Division, and will ask you if that is the letter of which you speak?

A. Yes, sir.

Mr. Malone: Please mark the letter for identification.

(The letter was then marked for identification, Respondent's Exhibit No. 69.)

Mr. Malone: I offer the letter as Respondent's Exhibit 69.

Mr. Bane: Object to that, Mr. Examiner, as incompetent, irrelevant and immaterial. The way in which the Department of Commerce may classify an establishment for the purpose of Census taking is in no way a determination of the proper character of the appellation or standing of such a concern.

Mr. Malone: I think it sheds light on it.

Examiner Sheppard: Let it go in under my former ruling. Mr. Reporter, let it be admitted.

(Said letter was received in evidence as Respondent's Exhibit No. 69.)

Mr. Malone: For the convenience of the Examiner, I read the following sentence only: "The class of manufacturing that you do would come under the head of re-manufacture, which is covered by the Census Bureau and Form 117, which was originally sent you, is the correct one on which to report. Reporting of products that are changed in any way is not considered duplication."

Mr. Bane: Now, Mr. Examiner, may I for the convenience of the Examiner, and while we all have it together, read one point from the letter, which says:

"In response thereto you state—'You are no longer engaged in the manufacture of flour from wheat. Our activities are confined to the processing and refining of flour which is brought from the wheat mills. In addition to this we make self rising flour."

Examiner Sheppard: All right. I will allow it some probative value, Mr. Malone.

Q. 51. I will ask you, Mr. Tupper, if you received a circular or pamphlet from the same department that bears on this same subject?

A. Yes, sir.

Q. 52. Mr. Tupper, I hand you a bulletin in pamphlet form, marked "Department of Commerce, Bureau of the Census, Census of manufacturies, 1927, flour and other grain mill products, etc. And direct your attention to page five thereof, and first ask if you received that pamphlet and you can identify that?

A. Yes, this seems to be the pamphlet I sent you.

Q. 53. Yes.

A. Yes, I received it.

Mr. Malone: Please mark that for identification.

(The pamphlet was marked for identification, Respondent's Exhibit No. 70.)

Mr. Malone: That is offered in evidence, Mr. Examiner.

Mr. Bane: I object, Mr. Examiner, as incompetent, irrelevant and immaterial, merely contains the definitions given by the Bureau of the Census for the purpose of filling out the report, and explanations.

Examiner Sheppard: Mark it and let it go in, Mr. Reporter, under the former ruling. I will give it probative value.

Mr. Malone: As this pamphlet contains thirty-nine pages it might promote the convenience of the examiner for me to read the brief paragraph.

Mr. Bane: It is understood that only page 5 is actually in evidence?

Mr. Malone: Only page five is what we are introducing. That is all we are introducing.

Q. 54. Mr. Tupper, how do you personally interpret the word "blender," and state whether or not there is any difference between that and mixer?

A. I think there is a distinction without any difference. I think blending supposes the thorough mixing, and if you have mixed thoroughly, you have done the operation of blending. I see no difference between the two, when the two are done properly and thoroughly.

Q. 55. How are the two used in the flour trade?

A. Interchangeably.

Q. 56. Mr. Tupper, is there any difference, to your knowledge and from your experience, of a good many years between self-rising flour put out by a so-called blender or mixer and the self-rising flour of the same grade put out by a so-called grinding mill?

A. No difference so far as my observation goes.

Q. 57. They are the same article?

A. Quite.

Q. 58. There is no subsitution of an inferior for a superior article?

A. No, both are pure wheat flours.

Q. 59. Processed with the leavening ingredients?

A. Quite so.

Q. 60. In the same manner?

A. Yes.

Q. 61. In the same way and by the same machinery?

A. That is my idea. I, of course, know how it is made at my plant, and I have seen several wheat plants where it is made, and it is made after the same manner. I cannot speak for all of them.

Q. 62. When a self-rising manufacturer sells flour to the public that he has made, is there any deception of the purchaser as consumer, if the flour is in fact made by a blending process, or a blending mill, as against self-rising flour made by the wheat grinding plant?

A. No, sir.

Mr. Bane: Just a minute. I object, Mr. Examiner, that is the question to be determined by the

Commission's conclusions from the evidence here presented, and not Mr. Tupper's idea or opinion. We would naturally expect Mr. Tupper would not admit that he is setting up here to deliberately deceive the public.

Examiner Sheppard: Any question of that kind has to be determined by the Commission, I support the objection. That is one of the very questions the Commission must decide.

Mr. Malone: I think that is one the Commission will have to decide.

Examiner Sheppard: Absolutely.

Q. 63. Mr. Tupper, what do you know about blenders buying flour at cost, at or about cost, of course you must confine that largely to your knowledge and personal experience, but if you have knowledge in other cases, tell us about that also?

A. I think I can speak with a personal knowledge on that proposition, becuse I have been a wheat miller myself, and actually conducted wheat grinding mills from 1908 to 1913, a trifle over five years, and one of my duties was to figure the cost of the flour. The same amount of wheat, largely speaking goes into the production of a barrel of flour now as it did in 1913, and if I am posted as to prices of wheat in St. Louis, for instance, the central basic market for Nashville purposes, and I can only speak for Nashville, and I know the prices of feed stuffs, the off-fall from the flour, just what the cost would be if I were making flour from wheat myself, and I have a little table here, if Mr. Bane will permit, its entrance to show that day before yesterday when I took off these figures, I was able to buy oft winter wheat 95 per cent patented flour at a price lower than I could have actually made the flour.

Q. 64. You mean soft winter wheat flour?

A. Yes, soft winter wheat 95 per cent flour.

Q. 65. I have not seen the figures, but it may throw some light on the subject if you will let me have them, I will offer them in evidence, or you can read your figures into the record if you wish.

Mr. Bane: Suppose we get a little bit more exact, if you will, the basis for his figures, unless he has got them in there, what they are.

Q. 66. Explain fully what your calculation is.

V. S. Tupper

A. It requires, as a general rule, four and one-half bushels of wheat to produce a barrel of flour. Figuring the inevitable loss at the lowest possible quantity, two pounds to that total, figuring 40 pounds of bran and 32 pounds of shorts, you will have left 196 pounds of flour, which constitutes a barrel of flour.

St. Louis Number 2, cash, red winter wheat, and that is the wheat out of which we must get our flour, or the most of the good flour is made,—there is a great deal of No. 2, but not a great deal of Number One wheat available. The price of Number 2, Red Winter Wheat, at St. Louis, on January 14th, 1930, was $1,375. The freight rate to Nashville on that wheat is 23 cents per 100 pounds, —60 pounds to the bushel of wheat, so that the cost per bushel to bring that wheat from St. Louis to Nashville is .138 cents, making the Nashville price, $1,513.

Under the heading Cost of flour with feed stuffs at present market, and I am figuring the selling price—

Mr. Bane: Of the feed stuff.

A. I am figuring the selling prices at which I can buy the feed stuffs, which will make the flour figure lower cost than if I figure actual cost of the feed stuffs. The cost of the feed stuffs is $1.425 per 100 pounds for bran, $1.525 per 100 for shorts. Table:

4½ bushels of wheat to make one barrel of flour, at $1.513 . . . . . $6.8085

From that is to be deducted the amount realized for the off-fall, so, I say, Less Feed Stuffs recovered:

Brand, 40 pounds at 1.425 per 100	.57
Shorts, 32 pounds, at 1.525 per 100	.488
Total deduction of	1.058

making the actual cost of the barrel of flour, without adding one penny for the so-called conversion cost, $5.7505, that is for 100 per cent flour. If you are to take out five per cent low grade of this, and make a 95 per cent patent flour, an additional amount is to be added because of the fact that the low grade is sold at a lower price than the higher grade. But, even taking the cost the actual cost of $5.75, I am showing my statement, which can be corroborated in this room, I was offered on the evening of January 14th, 1930, by the Holden Mill & Elevator Company of Holden, Missouri, a good high class soft winter wheat, ninety-five per cent patent, to the extent of

one thousand barrels, at $5.55 delivered Nashville, twenty cents per barrel less than the actual current cost of that day. Is that clear, or should I go further?

Mr. Malone: I think that makes it clear.
Mr. Bane: It is very clear.

Q. 67. Tell us briefly why the self-rising flour is cheaper to the consumer?

A. Well, because it contains the leavening ingredients, which, of course are available to the self-rising flour manufacturer in car lot quantities at a considerably lower price than the same baking powder for leavening ingredients would be available for the house wife.

Q. 68. Can you give us some idea of the figures on that?

A. We will take both the 25 cent and the fifty cent baking powder. The twenty-five cents per pound and fifty cents per pound. In order to get it accurately I went over it with Mr. Overall, our superintendent, and we took an exact measurement by grammes instead of the usual supposition that it takes one pound of baking powder for a 24 pound sack of flour. We found it did not take as much as one pound. We found the correct percentage of baking powder in flour is .0265 per cent, of the weight, so that one twenty-four pound sack of flour, the baking powder would be .636 pounds. On eight 24 pound sacks of flour, which make up a barrel of flour, the total weight of the baking powder would be 5.088. If at 50 cents per pound, the baking powder in that barrel of flour will cost $2.544; if at 25 cents, per pound, it will cost $1.272. Now self-rising flour is sold by the majority of the people in the southeast, the majority of the wheat millers and self-rising flour manufacturers at twenty cents per barrel over plain flour, and some sell at the same figure, I think some in this room, but I am giving this in a way to make it just as hard on our side as possible, the self-rising flour is sold at twenty cents per barrel over plain flour. Self-rising flour displaces by the manufacture from the plain to self-rising flour displaces by the manufacture from the plain to self-rising, 5.088 pounds of flour at .04 per pound, is .20352, or say, twenty cents, making a total difference of about forty cents per barrel, which shows a saving in the direct purchase of self-rising flour as compared with its manufacture at home of 87 cents to $2.15 per barrel, that represents the saving.

Examiner Sheppard: Let me see if I get the significance Mr. Tupper, you mean to state by your figures, that it is more economical for the housewife to buy and use self-rising flour than it is to use the baking powders?

A. Yes, sir.

Mr. Bane: I do not question the accuracy of the figures whatsoever, Mr. Examiner, but I object to the whole thing as incompetent, immaterial and irrelevant—immaterial and irrelevant, it is not incompetent.

Examiner Sheppard: Yes, I think it has very little to do with the issue involved. I will let you put it in.

Mr. Malone: It bears on the interest of the public.

Examiner Sheppard: Interest and conformity.

Q. 69. Mr. Tupper, now something has been said in this record about comparative prices between blenders so-called and wheat mills. How do you find that, Mr. Tupper in your experience?

A. It is difficult to answer a question that involves the other men, Mr. Malone. I just know that we have to figure very closely in order to get the business. I know that I am answering the question as I understand, but I may not have cause the drift.

Q. 70. The competition between the two classes of manufacturers is very keen in the southeast territory?

A. Very keen, almost vicious.

Examiner Sheppard: That is the grinders and the so-called mixers?

A. Yes, sir.

Mr. Malone: The so-called mixers, yes.

Q. 71. In your opinion is the self-rising flour, properly prepared by the so-called blender or mixer, superior to the mixture made by the housewife, and if so give us your reason?

Mr. Bane: Objected to Mr. Examiner, as incompetent, immaterial and irrelevant, whether in his opinion it is superior or not, has nothing to do with

this case. You certainly do not expect Mr. Tupper to say that his flour is inferior.

Mr. Malone: I simply intend to bring out that, Mr. Examiner, that his self-rising flour was free from lumps and absolutely correctly proportioned, and I think the witness knows that.

Mr. Bane: Why not ask him if his flour is not free from lumps, if he puts it out with lumps in it? I think he can answer that all right.

A. I think that my answer will be somewhat informative.

Examiner Sheppard: Read the question.

(The question was then read by the Reporter.)

Examiner Sheppard: I will allow you to answer.

A. It is more certain and more assured, in that the housewife naturally has not any scales to assure her of exact uniformity in the use of her leavening or seasoning ingredients, whereas in the case of a self-rising product gotten out by a manufacturer, it is mixed and blended, this self-rising product into the flour by a very accurate machine, which is designed for that purpose. There is no rule of thumb in it so far as he goes. Not only throughout the country, but particularly the southeast where there are so many negro cooks it is uncertain as to their mixing. That is the reason why the self-rising flour has attained its wonderful popularity, as any one will know by keeping up with the data appearing in the milling journals from time to time as to its growth.

Q. 72. Now, something has been said about adding phosphate to this so-called process or blended flour, what is the purpose of that?

A. It is a protective measure to keep the cook in the kitchen, to guard against her use of an excess amount of soda. They seem to have that trouble. Moreover, it is supposed—I cannot speak authoritatively, but it is supposed to restore to the flour some of the mineral content lost in the manufacture.

Q. 73. That is, the high patent flour takes out some of the mineral content?

A. In manufacture of the high patent some of the mineral content is taken out, and then the phosphatic element restores it.

Q. 74. Mr. Tupper, were you sent a stipulation by the Federal Trade Commission?

A. Yes, sir.

Q. 75. I hand you a letter under date of February 19, 1929, on the stationery of the Federal Trade Commission, addressed to the Nashville Roller Mills, signed by W. D. Woodfill, Chief Trial Examiner, and also a copy of a proposed stipulation, identified as belonging to file 1-4658, and with the serial number at the top of 383, and will ask you if you received the letter, and if this is a copy of the stipulation which, being unsigned, was returned in accordance with the commission's request?

Mr. Bane: Who made the copy?

Mr. Malone: I made it, it was made in my office.

Mr. Bane: You checked it?

Mr. Malone: Yes, I checked it.

Mr. Bane: There is no question if it was made in your office and you checked it.

Q. 76. Will you examine those papers and the letter?

A. This is the letter I received from the Federal Trade Commission.

Q. 77. And the copy of the stipulation?

A. Yes, sir.

Mr. Malone: Please mark them for identification.

(Said papers were then marked, respectively for identifications, Respondent's Exhibits 71 and 72.)

Mr. Malone: They are offered as respondent's Exhibits 71 and 72.

Mr. Bane: Objected to, Mr. Examiner, as irrelevant and immaterial, cannot possibly have any bearing on any issue in this case in determining any issue presented by this complaint. The fact that the Commission may have offered an opportunity to Mr. Tupper to stipulate that he would do certain things which offer he refused, can have no bearing on proving the truth or the falsity of the charges in this complaint.

Examiner Sheppard: What is the purpose, Mr. Malone? I see no purpose. It is just a step in the negotiations preceding up to the trial, to give the respondents an opportunity to stipulate in lieu of going to trial in this case, which has now passed the stipulative period, and we have been in the trial of it for sometime. I see no reason for it at all.

Mr. Malone: The purpose, Mr. Examiner, is to

show that the respondents were offered the stipulation in this case, which they could hardly accept as it contained statements that they were neither millers nor manufacturers, and to show their attitude, their understanding of their business and their attitude in the case, that they are not putting the commission to the trouble of a trial for no other reason than their own good faith and belief that they are bona fide millers and manufacturers.

Mr. Bane: Is not that shown, Mr. Examiner, by the simple statement of fact, that he was offered the stipulation, and refused the stipulation. That fully covers that. Is not the actual purpose, Mr. Malone, in introducing this line of evidence, and if it is, I can correct your impression—Mr. Examiner. May this be off the record?

Examiner Sheppard: Off the record, Mr. Reporter.

(Following a discussion of the record.)

Mr. Malone: Just to preserve any possible rights in the matter, suppose I offer it and you support the objection.

Examiner Sheppard: All right. I think the offer has already been made and objection made. Therefore, Mr. Reporter I will support the objection.

Q. 78. Mr. Tupper, is your name, that is the name of the Nashville Roller Mills, of any value to you?

A. Obviously a concern that has been a going concern since 1908, or about twenty-two years, its good will is a real money value.

Mr. Bane: Really going since 1903.

A. No, it was the old Tri-State Milling Company at that time. Since 1908.

Q. 79. Would giving up your name, apart from the good will, cause you an expense in changing your literature, amending your charter, and changing your bags and brands, etc.

A. I think that is clear, it would involve quite a loss.

Q. 80. A considerable item?

A. Yes, sir.

Q. 81. Of course, you are not prepared to say just in dollars and cents what that would be?

A. No, I would not be prepared to say.

Q. 82. But, that would be a considerable item?

A. Yes, sir; it would be quite a considerable item.

V. S. Tupper

Q. 83. Tell us, please, the value of your plant and equipment?

A. The present reproductive value of the plant and the equipment, speaking solely of plant and equipment?

Q. 84. Yes?

A. That would be about $155,000.00.

Q. 85. That is the reproductive value?

A. The reproductive value, yes.

Q. 86. What do you estimate the whole investment to be?

A. The whole investment something like 310,000.00, about twice that.

Q. 87. What amount of business did you do in 1929, giving us the amount in barrels and then in dollars and cents?

A. The amount of flour was 315,596 barrels, and the money amount, money value is $2,170,036.01.

Q. 88. That is the value you sold it at?

A. Yes, sir.

Q. 89. All that Two Millions of dollars was not profit, was it, Mr. Tupper?

A. No, sir.

Q. 90. You are giving your gross figures?

A. Gross figures. The volume of sales, turn over.

Q. 91. Do you think that your profit is very large on that year's business?

A. No, I believe you would consider it rather small on a volume of 315,596 barrels. The profit before deduction for Federal taxes, and after deduction for State, County and City taxes was $33,361.33.

Q. 92. Leaving what?

A. $33,361.33. The Federal Taxes will be in the neighborhood of $3,000.00 so that will leave approximately $30,000.00 in profit, which into the 315,596 barrels of flour shows a net profit of less than ten cents a barrel, and that is quite a small item, when you consider you are averaging $7.00 or more on every barrel you ship out, so, on every $7.00 risked, you are undertaking to make only ten cents a barrel, or 10/100 one percent.

Mr. Bane: A very close profit.

A. Very close.

Mr. Bane: And very close selling.

A. So close as to make it always uncomfortable to do any business.

V. S. Tupper

Mr. Malone: It is stipulated that under date of July 12th, 1929, the following suggested settlement of these controversies was made to the Federal Trade Commission by counsel representing respondents in the following cases:

Docket No. 1601, Francis J. McCarthy, trading as the Wautauga Milling Company, et al;
Docket No. 1597, John McGraw, E. A. Glennon, trading as Royal Milling Company, et al;
Docket No. 1598, D. V. Johnson, trading as Tennessee Grain Company and Tennessee Milling Company;
Docket No. 1599, Nashville Roller Mills, et al;
Docket No. 1600, Snell Milling Company, et al;
Docket No. 1602, J. A. Wells, et al., trading as City Milling Company, et al.

That a fair solution of the pending controversy with the Commission in these cases as to the use of the word "mills," "Milling" or "manufacturer" in trade names or on literature, bags, etc., while the respondents are of opinion that they are engaged in a milling and manufacturing operation, they do not claim to be, and never have claimed to be grinders of wheat, and to this end respondents are willing to place on their letter heads, bags, invoices, etc., in conspicuous lettering the words,

"Not Grinders of Wheat."

That is the substance of the solution that was offered the commission.

Now, the Commission acknowledged receipt of that document and later an order was entered by the Commission in substance providing that the acceptance or rejection of the proposed solution would be reserved to the final argument of the case.

Mr. Bane: Reserved for consideration on the final determination of the case. That is the substance of it.

Mr. Malone: That under date of July 12th, 1929, the same date, a solution was suggested in the case of Docket No. 1604, in the matter of E. C. Faircloth, Jr., et al., trading as Cherokee Mills, stating in substance, that these clients feel that they occupy a somewhat different position from the other Nashville firms or corporations against which similar complaints have been filed, in that some six years ago they installed grinding machinery for the manufacture of feed stuffs, which is now a considerable per centage of their business; and that with respect to

this firm, and that product they feel there can be no doubt as to their right to use the term Cherokee Mills; and as to their flour products, while believing that they are both manufacturers and millers, they are nevertheless willing to mark on every bag in conspicuous place, the words "Packed by Cherokee Mills," and the same course was taken by the Commission with respect to that suggested solution.

Examiner Sheppard: All right.

Q. 93. Mr. Tupper, does the Nashville Roller Mills use trade names?

A. Yes, sir.

Q. 94. What are they?

A. Cumberland Valley Milling Company and Bele Meade Mills.

Q. 95. What is the purpose of using those trade names?

A. Well the principal purpose is to increase the business.

Q. 96. In what respect?

A. In that we find, say two jobbers at Meridian Mississippi, one wanting to handle a certain line of brands and another. And so in that way we take care of the needs of both of them, and the final result being that the ultimate consumer through my large volume of business, my ability to sell a larger volume of business at a lower percentage of profit per unit of volume, than I would a smaller volume, gets the benefit.

Q. 97. Is that the general custom by the so-called blenders and the so-called wheat mills, if you know?

A. I do not know that it is general.

Q. 98. Well, to what extent do you know that it is used?

A. It is, of course hearsay, such as Ballard & Ballard, and I believe the Liberty Mills, but I am not really in position to speak from a definite knowledge.

Q. 99. You cannot speak as to the wheat mills?

A. I just believe it is more or less the general practice. That is my belief.

Q. 100. But, you cannot speak as to that from your personal knowledge?

A. No, I would not undertake to do that.

Q. 101. It is just hearsay with you, and belief?

A. Yes, sir.

Examiner Sheppard: The same type of flour is put out under the various names?

A. Yes, sir.

Q. 102. It is a selling device which ultimately results, in your opinion, in a greater volume of business and a reduction in price to the consumer?

A. That is entirely true, regardless of the original motive. It does result finally in a benefit to the consumer in the way of a reduction in price.

Q. 103. What do you know if any thing, as to grinding mills purchasing flour and putting it out under their own brands?

A. Only from hearsay, as to sales made by other, but so far as my own knowledge is concerned, I know of sales I, myself have made.

Q. 104. Well, what sale have you made, that you can tell us of?

Mr. Bane: Objected to.

Examiner Sheppard. I will let you testify to that.

A. I have made sales, myself, speaking of myself as the Nashville Roller Mills, and they have been to the City Mills, Columbus, Georgia; Dayton mills at Dayton, Tennessee; Bridgeport Milling Company, Bridgeport, Alabama; Seaboard Flour Mills at Stanford, North Carolina; Bell Dowling Mills at Springfield, Tennessee; Petersburg Milling Company, Petersburg, Tennessee; Riverside Milling Company, Shelbyville, Tennessee; Rewoda Milling Company, Carthage, Tennessee; Bolton Milling Company, at Hartsville, Tennessee, Log Cabin Milling Company, Chattanooga, Tennessee and the Farmers Mill at Dayton, Tennessee.

Examiner Sheppard: They take your product and pack it in their own bags, is that it?

A. I only know that that was done in one instance, but that is the natural assumption, and I would not state of my own knowledge.

Q. 105. You mean the packing by one concern?

A. One concern, because I shipped to them in their own bags after they shipped their bags to me.

Q. 106. Give us the dates when they were made?

A. All within six years, and only four currently.

Q. 107. By currently, you mean during the present year, or 1929?

A. I would not say during 1929. I recall we sold in 1929, but do not recall any in 1930. But, I recall that, and

would call currently within five or six months, which is a proper definition as to current, in turn over in business. I have sold four currently, the others to be on the safe side of the truth within six years.

Q. 108. What four have you sold currently?

A. The Dayton Mills, the Bridgeport Milling Company, the Log Cabin Milling Company and Farmers Mill.

Q. 109. Now, of course, except in the case where you packed in the man's own bags, you cannot state from actual knowledge what was done, but from the quantities bought, you can, or do you know any, or can you suggest any other reason for the purchase than putting it out by the mill under its own brand?

A. I happen to know that with the exception of packers, it is not the custom of the consuming trade to buy flour for home purpose in packages which we ship out to these mills, 140 pound jutes, they buy in 24's, 96's, and some few farmers buy in wood, but I do not think any purchases are made by the consumers in jutes.

Q. 110. These were shipped in 140 pound sacks?

A. With the exception of the one to the Dayton Mill, who were shipped in ninety-eight pound bags. But these I did not ship in my own brands, because I told them I did not want them selling my brands in competition with my regular Dayton connection. In Dayton, Tennessee.

Q. 111. Those mills are all grinding mills?

A. So far as I know, that is my information.

Q. 112. Were you furnished by the Southland Mill & Elevator Company of Nashville, blanks for reports sent to it by the Census Bureau at Washington?

A. That was given to my brother, Mr. W. V. Tupper.

Q. 113. And he procured it from the Southland Mill & Elevator Company?

A. He so stated.

Q. 114. Please state whether you can identify the paper now handed you as that document?

A. That is the paper.

Mr. Malone: Please mark that paper for identification.

(The paper was then marked for identification, Respondent's Exhibit No. 73.)

Mr. Malone: It is offered, Mr. Examiner, as Respondent's Exhibit No. 73.

Mr. Bane: Objected to as incompetent, irrelevant and immaterial.

Examiner Sheppard: In line with the other—

Mr. Malone: Yes, it is a blank, which has space for flours purchased from other mills.

Mr. Bane: I do not see that it tends to prove anything in the case, Mr. Examiner. It merely shows the Census Bureau has such a line on the report that it asks for.

Examiner Sheppard: If you watn to use it as an exhibit, Mr. Malone, I will let it go in.

Mr. Malone: Yes, I think it is proper.

Examiner Sheppard: All right, Mr. Reporter, mark it.

(Said report was received in evidence as Respondent's Exhibit No. 73.)

Q. 115. The Southland Mill & Elevator Company was a grinding mill?

A. It was at one time.

Q. 116. But it is not now?

A. I think not.

Mr. Bane: How long has it been since it was?

A. I could not say, Mr. Bane, I have an idea, I think the flour mill and machinery are dismantled. I think they grind meal, but that is purely information.

Mr. Bane: Have they been grinding in the last three or four years?

A. I think in the last three or four years they possibly have. I do not think in the last two—

Mr. Bane: Grinding wheat?

A. Grinding wheat. They had a 200 barrel mill, wheat mill over there.

Q. 117. This is supposed to be a report for September, 1925, and shows by the blank, is that correct?

A. Yes, sir.

(At 12:30 o'clock p. m., an adjournment was thereupon taken in the further hearing of this case until 1:30 o'clock p. m. this date.)

Docket No. 1601.

Nashville, Tennessee, January 16, 1930.

Met pursuant to adjournment, at 1:30 o'clock P. M. Before:

William W. Sheppard, Examiner.

Appearances:

Baldwin B. Bane, Attorney for the Commission.

Thomas H. Malone, Jr., Attorney for the Respondents.

V. S. TUPPER was thereupon recalled to the stand, and upon further examination, testified as follows:

Direct Examination Continued by Mr. Malone.

Q. 118. Mr. Tupper, before adjournment I asked you something about the trade names under which the Nashville Roller Mills did business. I wish you would supplement that statement on that point?

A. I do want to modify that, because we operate under the name of Red Mills. That is more of a nickname than anything else, because when I started I used that on the Nashville Roller Mills Letterhead, referring to the Red Mill Flour, usually.

Q. 119. Your stationery I believe has a large red border?

A. Yes, the Nashville Roller Mills, and the Red Mill was the way it is designated.

Q. 120. The mill was designated as the Red Mill?

A. Yes, sir. I also want to call attention to the fact that several years ago when the old Tri-State Mills were liquidated, Miss Jennis Morrisey, who was then private secretary of Mr. Ed Kelley, president, had what is called a desk mill, the Rock City Mills. She had developed a number of customers in the Carolinas and asked me if I would take over that business and relieve her of the bags, at the invoice price, which I did with the good will. And I have some of her bags now, under the name of Rock City Mills, which are going to customers of the Cumberland Valley and Nashville Roller Mills, although I do not have letterheads for the Rock City Mills. That explains my status in full on trade names.

Q. 121. Mr. Tupper, have you seen a publication in the Modern Miller of November 30th, 1929, showing the increase of self-rising flour production in the United States in the past few years?

A. Yes, sir.

Q. 122. Please look at page 17 of the Modern Miller of November 30th, 1929, and see if the marked portion there shows those figures?

A. Yes, sir.

Mr. Malone: Is there any objection to reading that in, or having it copied in?

Mr. Bane: I do not see any reason for it, Mr. Examiner, at all. Of course, this does not establish the accuracy of the figures in any way, does not show how they were gotten, where they were gotten, except that they come from the Bureau of Foreign and Domestic Commerce. A great many of the reports of that bureau are estimated, a large proportion are estimated. Some are made up upon exact figures and an estimate upon the others. I do not see the purpose of it. I am perfectly willing to concede that the use of self-rising flour has been increasing. I raise no issue on that.

Examiner Sheppard: I think that will be sufficient.

Mr. Bane: It has been on the increase.

Mr. Malone: From 1924 to 1929?

Mr. Bane: Yes.

Examiner Sheppard: I think that is sufficient.

A. May I offer the suggestion, I think that should go into the record, as to whether or not it is absolutely accurate—

Examiner Sheppard: I am not interested in the flour mills, outside of the name. I am going to keep my finding down to the lowest limits I can in reference to the actual allegations of the complaint. If we went into the investigation of the flour mills policy, that would be material, and a good many things that you have submitted here this morning, Mr. Malone, and all of them are interesting. But, in this proceeding there is only one issue, and that is as to the use of the words "mill" or "milling" in the trade name. That is all I will find.

Mr. Malone: I think the stipulation covers the purpose.

Q. 123. Have you seen a copy of the Modern Miller of March 17, 1928, purporting to give the proceedings of a convention held at Nashville, on March 14th, and 15th, 1928, and including an address by Dr. W. A. Strowd, Secretary of the Association?

A. I have.

Q. 124. What is the Soft Wheat Millers' Association?

A. It is an organization formed about the year 1923, for the promotion of the sale of soft winter wheat flours, particularly the self-rising flour, that was their object at the time I was a member of it.

Q. 125. How long were you a member of it?

A. I was a member of it for three years.

Q. 126. That is when I say you, I mean the Nashville Roller Mills?

A. Yes, sir.

Q. 127. Were you an officer?

A. Yes.

Q. 128. What?

A. Vice-president.

Q. 129. Vice-president?

A. Yes, sir.

Mr. Malone: There are only parts of this address as published in the Modern Miller to which I desire to call attention.

Mr. Bane: I do not see where it is at all pertinent. Of course I do not know what the substance is.

Examiner Sheppard: Does the gentleman state anything about the use of the word "mill" or "milling" in the trade names?

Mr. Malone: No, sir; he does not.

Examiner Sheppard: That is all I am interested in.

Mr. Malone: He says this, Mr. Examiner, he shows that it is an association which is antagonistic to the so-called blenders, and that by selling to the blenders they are really injuring themselves. Now the purpose of offering that, is to show, whether my position be well taken or not, that this is in itself, essentially a private controversy, and that the Commission therefore is not properly interested in it.

Examiner Sheppard: Heretofore I have allowed you to put matters in in reference to that. I do not want any more cumulative stuff on that matter, that is already in the record, substantially.

Mr. Malone: You think that is substantially in the record?

Examiner Sheppard: I think so from what you have already put in. In other words, I have allowed you, the other day over the objection of Mr. Bane, and for the reason that you said it was one of your

major defenses, to put in certain matters that in my judgment at the time had no bearing upon this issue; but I left it in because of your assertion that it was a major defense of your case. That is in reference to other mills, you know, the grinders.

Mr. Malone: Now, this sentence, particularly is what I had in mind. I will read that, then you can rule on it on Mr. Bane's objection.

Mr. Bane: Mr. Examiner, that is just another way of getting that into the record.

Mr. Malone: I mean you can strike it out if you think it should be.

Examiner Sheppard: Read it off the record.

(The passage was then read off the record.)

Examiner Sheppard: I do not see that it is pertinent to this issue, the issue being as I have said a number of times, only whether they have the right to use the words in the trade name. I know there are some extraneous matters, it is almost impossible to keep extraneous matters out of cases, but in so far as the allegations are concerned, that is the only issue in the case.

Mr. Malone: The complaint, as I recall it, proceeded on the idea, in some part of it at least, that a middle man's profit was indicated when a blender put out flour and would not be indicated when a mill put out the flour, selling direct. This is pertinent, we think, on the point of the selling at cost, and shows that selling at cost has gotten to be so generally practiced that the secretary in his annual address there, feels it is necessary to call attention to the practice.

Mr. Bane: It does not say that, Mr. Examiner, in any way whatsoever.

Examiner Sheppard: To save all this talk, I will bar it. That will end it.

Q. 130. Did you receive, I mean the Nashville Roller Mills, receive a questionnaire put out by the Northwestern Miller, Minneapolis, Minnesota, under date of September 28th, 1929?

A. Yes, sir.

Q. 131. Please look at the paper now handed you, under that date, signed "Northwestern Miller, by G. O. Abraham, as well as I can read it, Statistical department, and see if that is the paper to which I refer?

A. Yes, sir.

Mr. Malone: I ask that it be marked for identification.

(The paper was then marked for identification, Respondent's Exhibit 74.)

Mr. Malone: I offer that as Respondent's Exhibit 74.

Mr. Bane: Mr. Examiner, I do not see how, to save my life, it tends to prove anything as to the allegations of this complaint. I think it tends to prove otherwise. If this concern called itself a "mills" "The Nashville Roller Mills," it only tends to show that this concern, the Northwestern Miller, thought it was, and an honest to goodness mill, what they represented themselves to be, and sent them this, and it seems to show me a distinction. Down at the bottom, in addition to the information it requests in the main part of the letter, it asks for the capacity of a blending mill, in addition to the information up in the other part of the form is wholly distinct.

Examiner Sheppard: What is the purpose, Mr. Malone?

Mr. Malone: The purpose for which it is offered is a post script, this is on a form, apparently, and shows that mills have blending plants. That is put on that form and is directly pertinent.

Examiner Sheppard: Let it be introduced.

Mr. Bane: It is objected to as incompetent, irrelevant and immaterial, and not tending to prove in any way whatsoever that the Northwestern Miller classes this man as a mill. The letter does not even indicate that they think the word "mill," "milling" anything of that kind has any connection with it. If you want to prove what the Northwestern Millers think of a concern carrying on such a business as Mr. Tupper does, let us get the Northwestern Miller and ask him.

Mr. Malone: Of course we do not follow the rule as strictly as in formal cases, Mr. Examiner.

Examiner Sheppard: I will let it go in for what it is worth, and give it probative value.

(Said paper was received in evidence as Respondent's Exhibit No. 74.)

Q. 132. I call your attention to the line at the bottom, "What is the capacity of your blending mill," with blank left for the answer.

A. Yes, sir.

Mr. Malone: I think that is all.

V. S. Tupper

Cross-examination by Mr. Bane.

X. 1. The mixer in your plant, Mr. Tupper, or what you referred to as the mixer, it is the same thing that is used to blend, what you call plain flours, and at a different time it is the same thing that is used to mix self-rising flour, is not it?

A. Yes, sir.

X. 2. You use one and the same mixer?

A. Yes, sir.

X. 3. The reels sift the flour, don't they?

A. Yes, sir.

X. 4. That is what they do to it?

A. Yes, sir.

X. 5. The way that you describe the preparation of self-rising flour, what you call process flour, is as it is done in your plant?

A. Yes, sir.

X. 6. That is what you were describing?

A. Yes, sir.

X. 7. You maintain at your plant a laboratory, don't you?

A. Yes, sir.

X. 8. In which laboratory you have made chemical analysis of the flour, don't you?

A. Yes, sir.

X. 9. I did not get that straight, when did you operate a grinding mill?

A. From June, 1908—this is under my own supervision.

X. 10. Yes.

A. June, 1908, to July 4th, 1913.

X. 11. And what happened, especially at that time, why did you stop operating the grinding mill?

A. It burnt down.

X. 12. It burnt down. Then, since 1913 to date, the Nashville Roller Mills has not operated a grinding mill?

A. It has not.

X. 13. What was the capacity of that grinding mill?

A. Two hundred fifty to three hundred barrels per twenty-four hours.

X. 14. Now, you testified quite at length, Mr. Tupper, with reference to the proceeding before the Interstate Commerce Commission, on this milling in transit situation in 1916. Did you attend all of the hearings in that matter, in that case?

A. To the best of my recollection, yes.

X. 15. You attended all of them?

A. I think that I did. That is my best recollection.

X. 16. Now, the heading of that case was, "The Freight Bureau of the Chamber of Commerce of Macon, Georgia, vs. Southern Railroad, et al.," wasn't it?

A. Yes, that is my recollection.

X. 17. That case originated, did it not, Mr. Tupper, by the Macon Chamber of Commerce, on behalf of some blenders, or a blender of Macon, Georgia, attempting to get the same rates, the same transit privileges from Macon, Georgia, that the Nashville, Tennessee, blenders enjoyed, is not that the way that case originated?

A. I do not recall it. I know that it was involved that if the Macon people did not get it, it involved the loss of the in transit privilege in Nashville.

X. 18. That was the object of the proceeding, to obtain the same privileges for blenders in Macon, that the blenders in Nashville enjoyed, or else remove the privilege from the Nashville blender as a discrimination in favor of the Nashville blender?

A. So, naturally we were in favor of the Macon men.

X. 19. That was the purpose of the Macon proceeding, that was why it originated?

A. I do not know. If I knew I would be glad to tell you.

X. 20. Does not the opinion show that it was a complaint on the part of the Macon Chamber of Commerce on behalf of the Modern Milling Company, one of its members?

A. The opinion speaks for itself, Mr. Bane.

X. 21. Now, the result of that opinion was, that they did not take it away from Nashville, but they put it on the basis they gave to Macon, was not it?

A. Is that the decision?

X. 22. Yes, that is the result of it.

A. I think that is right.

X. 23. You were asked, or there was read to you, just for the assistance of the Examiner, and I would like to read from page 485 of this opinion:

"It is with that allegation of unjust discrimination in favor of Nashville, which point is accorded certain anyquantity transit arrangements on self-rising flour not applicable at Macon, and the related issue raised by the tariffs here under suspension, representing the efforts of some of the carriers to discontinue the practices at Nashville, that we are called upon to deal."

That was the case, was it?

A. I believe you are reading from an authenticated copy, yes, sir.

X. 24. I am reading from the same copy Mr. Malone read from, that is, Mr. Malone's copy.

A. That is the answer I would have given him if he had asked definitely about it, that I could not say.

Mr. Malone: I might say that I was one of the counsel in the case, Mr. Bane, and pursuant to the custom of the Interstate Commerce Commission they sent me that advance sheet.

Mr. Bane: I am not disputing the correctness of it at all. I just want to identify we are reading from the same opinion, is all.

X. 25. And then I would like to read from page 497 of the same opinion, for the information of the Examiner:

"While the Commission is asked by the one faction or the other of this controversy to decide that the treatment accorded self-rising flour by each is "milling" or "mixing," we deem it unnecessary for the purpose of this case to do so, further than to state that the process by the miller is clearly shown to be a separate and distinct operation following the initial one of grinding the grain, and this second process is in all essential respects the same with the miller as the process by the so-called manufacturer."

They definitely then, from that refuse to decide the question of whether the manufacture of self rising flour was or not a milling process or mixing process, didn't they?

A. I would rather leave that to the commission to decide.

X. 26. I mean, in its opinion they refused to do it, that is what it says, don't it? It says, "we deem it unnecessary for the purpose of this case to decide it"?

A. That is the way I read it.

X. 27. Now, do you know when this case was brought who was the President of the Southeastern Millers Association?

A. My recollection is, it was Mr. E. M. Kelly.

X. 28. I will ask you if Mr. E. M. Kelly, President of the Southeastern Millers Association, did not actively participate in this hearing on the part of the Nashville blenders?

A Yes, sir.

X. 29. And other members of the Association took the same position that he did, didn't they?

A. Not that I know of.

Q. 30. I read again from the opinion, page 489:

"This attitude is supported by two of the three Nashville lines, as well as by the president of the millers' association, who is also the active head of the Liberty Mills, a concern of large capacity at Nashville producing both plain and self-rising flour, and who believes that the position of the other members of the association, if permitted to be made effective by the carriers aligned with them, would result in injustice and hardship to the manufacturers who established this business."

Do you know whether or not there were other concerns that took the same position that the Liberty Mills took?

A. I don't remember if there were.

X. 31. You don't remember?

A. I would not like to say definitely, one way or the other.

X. 32. I will just ask you to read, without reading into the record, from the order entered by the Interstate Commerce Commission in this case, and see if that order, or just tell me if that order does not deal wholly and solely with the question of putting the Nashville and Macon blenders upon the same basis, so far as transit, or the use of a transit privilege, or the right to a transit privilege is concerned?

Mr. Malone: Just a moment. I believe I would prefer to have the order put in. You ask the witness to construe a legal document. It is only about a page, I think.

Mr. Bane: I think we will take judicial notice of the fact it does, from the opinion, from the order, Mr. Examiner.

X. 33. Now, will you, for my benefit and the benefit of the record, Mr. Tupper, just explain to us what you mean by this any-quantity transit rate?

A. It is the proposition of getting the transit rate on any quantity that you ship out.

X. 34. Suppose you let me ask you, and see if I get it correctly: Does that mean that you can buy flour from any point in the United States and bring it into Nashville, of course I assume that when you buy, practically none of the blenders buy in less than car load lots?

A. Do you ask that as a question?

X. 35. Yes?

A. No, I think they all buy altogether in car load lots.

X. 36. So then, you can buy a carload of flour from any point in the United States, bring it into Nashville to your plant, there you have the flour unloaded, put it through the process that you have described, and then you can ship that flour out from your plant to any destination in the Southeastern territory, on the through car load freight rates from the point of origin to the point to which you ship that flour, is that correct?

A. No. In the first place, you cannot buy flour from any point and bring it into Nashville and get the milling-in-transit rates.

X. 37. All right, from what points cannot you get the rate?

A. You can get the rates from north and west of Nashville. You cannot bring it from Texas, or Arkansas, you cannot bring it in from Pennsylvania. I am sure you cannot bring it in from Virginia. It is a rather large territory that you can bring it in from and get the advantage of the milling-in-transit rate.

X. 38. Let me ask you this: Does not that arrangement which I have described, on which you can take advantage of that rate, apply to any territory if the origin of the flour is east of the Rocky Mountains, west of the Allegheny Mountains and north of Nashville?

A. Largely speaking I believe you are correct on that, but I am not positive. It is correctly stated on the tariff. I am not posted on those matters and cannot answer that.

X. 39. You can at least do this—

A. In a general way it is all well enough for your purpose.

X. 40. You can at least secure the rates on shipments from Missouri, Illinois, Indiana, Ohio and Kentucky?

A. Yes, sir.

X. 41. From mills there?

A. Yes, sir.

X. 42. Move it down to Nashville in car load lots, take it out at your plant, do whatever you want to with it there, then load it and ship it from Nashville to any point in the Southeast where it is a through movement, of course, at the same rate that the flour could have been shipped from the point at which it originated, started to you at Nashville, on the straight rate?

A. No, in some instances not, it is the through rate.

X. 43. The through car load rate, I mean?

A. Not the through car load rate.

X. 44. What is it?

A. There are a number of instances where the car load rates, for instance, to points in Florida, is somewhat lower than the less than car load rates, in some instances, in North Carolina, South Carolina, or in Alabama and Georgia, which comprises the greater part of the territory of the so-called blenders, largely speaking, the rates on car load and less than car load, are the same, but I am speaking on general information.

X. 45. Are not car load rates on shipments generally, always lower than l. c. l. rates?

A. I would not say generally in the southeast. There are more instances where the car load rates are about the same, varying a small number of cents per barrel, as are car load rates, but, in a number of instances there are differences.

X. 46. But, this any-quantity privilege gives the right to move it from Nashville on the basis of car load or less than car load rates?

A. On the basis of the less than car load rate, but on the through rate.

X. 47. In other words—let me get you straight—

A. I mean to say that I am not sure I am informing you correctly on this.

X. 48. I do not see how you determine the freight. Do you bring it in on the car load rate and ship out on the less than car load rate?

A. Yes, the balance of the through rate.

X. 49. The balance of the through rate on the car load or less than car load, it must be the car load, must not it?

A. Not necessarily.

X. 50. You have not any L. C. L. movement from point of origin?

A. No, but we have a l. c. l. movement from the point of milling in transit.

X. 51. Yes?

A. From that point we get the balance of the through rate.

X. 52. The through rate was c. l. rate?

A. There is a different rate, in some instances, between l. c. l. through rate and the c. l. through rate.

X. 53. Don't you have to use one or the other?

A. Yes, we pay the less than car load rate on less

than car load movement, and car load rate on car load movement from Nashville.

X. 54. Where does the rate from the point of origin come in?

A. We have the car lot rate from point of origin on the car lot.

X. 55. It does not appear to me, or I do not see how you can make your rate up. Suppose you started at Louisville, Kentucky, you certainly come to Nashville on the car load rate, don't you?

A. Yes.

X. 56. You pay on that rate for that shipment?

A. Yes.

X. 57. Then, as I understand, the way milling-in-transit works in other industries, you ship from Nashville, we will say, to Montgomery, Alabama.

A. Yes.

X. 58. At Montgomery, Alabama, there has to be paid a rate from Nashville to Montgomery?

A. Yes, sir.

X. 59. There is also a freight tariff published, which is less than the combinations of the local rates, that is, Louisville to Nashville and Nashville to Montgomery, of a through rate from Louisville to Montgomery. As I understand, all you pay on that movement from Nashville to Montgomery is the balance remaining after you have paid from Louisville to Nashville, on the through rate from Louisville to Montgomery, plus the transit privilege, which is probably three cents a barrel—or three cents per 100 pounds in the case of steel, I know.

A. There is no penalty on flour, at all.

X. 60. You do not have to pay anything for holding over?

A. No, sir.

X. 61. All you have to pay is the balance of the through rate from Louisville to Montgomery?

A. I am not understanding you any more clearly than I am making you understand me, Mr. Bane. I should say, if the less than car load rate, Louisville to Montgomery is 60 cents, and the car load rate is fifty cents per barrel, in case of the car load shipment, we would get the benefit of the through rate, fifty cents, Louisville to Montgomery. But, in case of a less than car load shipment, we get the benefit of the less than car load rate. I do not see how that can be more clearly stated, unless you want to bring the tariffs up. I can go through them with you. I am not

essentially a tariff man, but just giving you the general principles.

X. 62. It certainly does not appear clear to me.

A. I am sorry.

X. 63. Let us see if it does not come this way: We have the cities of Louisville, Nashville and Montgomery. Suppose the car load rate on flour, Louisville to Nashville, to be fifty cents, what is it, per barrel, 100 pounds or what?

A. Either way, just call it that way, or per unit.

X. 64. Fifty cents per unit, we will call it, through here, that is what you pay because you buy in car loads?

A. Yes, sir.

X. 65. You make a shipment from Nashville to Montgomery, and the rate on it is the l. c. l. shipment rate?

A. Yes, sir.

X. 66. We will say the rate there is 32 cents per unit, l. c. l.

A. Yes.

X. 67. Now, there is a through rate from Louisville to Montgomery of 65 cents per unit. Is that clear now?

A. Yes.

X. 68. When this flour arrives from Louisville to Nashville you pay fifty cents to the railroad getting it in here, don't you?

A. I do.

X. 69. When you ship it from Nashville to Montgomery, what do you pay the railroad for that shipment?

A. I pay the balance of the less than car load rate based on the through proposition from the Ohio River or Louisville.

X. 70. Based on the through l. c. l. rate from Louisville?

A. I have answered the question, Mr. Bane.

X. 71. That is what I mean, based on the through l. c. l. rate from Louisville?

A. I have given you a full and complete answer on the theory of the thing.

X. 72. You can answer that, based on the l. c. l. rate from Louisville?

A. I do not know whether it is the same question you are asking. I am not any more clear on your questions than you are on my answers.

X. 73. You can answer?

A. Don't you want the information?

X. 74. That is all right.

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Examiner Sheppard: Do you want all this on the record?

Mr. Bane: I want to get it in on this. Just answer my question and I think we will get it clear.

X. 75. When you ship, l. c. l. from Nashville, state whether you pay the balance on the car load or less than car load, when you ship l. c. l. from Nashville to destination?

A. Let me answer that before I forget what you are saying. When I ship l. c. l. from Nashville, I get the benefit of the balance of the l. c. l. rate from Nashville to Montgomery of the rate from Louisville to Montgomery.

X. 76. That is what I am getting at.

A. I think you ought to put an expert on tariffs on. Somebody better posted on the tariffs than I am.

X. 77. What I am getting at, when you make a l. c. l. shipment from Nashville, the thing you have to pay is the balance of the l. c. l. rate, from point of origin, and not the balance of the l. c. l. rate from point of origin?

A. That is my understanding.

X. 78. That is all I am trying to get. Now, that is what you mean by the any-quantity milling in transit rule or privilege, is it? That is what you mean by the any-quantity?

A. I think the general understanding of any-quantity is largely the idea it is about the same rate as the carload rate.

X. 79. I thought the understanding of any quantity was, that you could get that milling in transit privilege on a shipment of less than car load, or on car loads, that the shipment did not have to be a car load shipment, in order to get the privilege. Is not that what you mean by any quantity?

A. No, I think the distinction is, any quantity as compared to the carload rate.

X. 80. That is it, so you can ship out in less than carload quantities?

A. Yes.

X. 81. You move it in in car lots, but can ship out in less than car lots and get the rate, you do not have to ship in car lots to get the rate?

A. You can ship out in less than car lots, with a tremendous saving over the combinations of the local rates.

X. 82. That is the combination of the rates of car load from Louisville to Nashville and less than car lot Nashville to Montgomery?

A. That is substantially less than the local rate from Nashville to point of destination, always substantially less, and there is the significance of what I think you are driving at.

X. 83. I don't think you said that. I think your statement is wholly wrong. I don't think you meant what you said.

A. Did I not say that the saving is in shipping out on the balance of the through rate as compared with the local, the balance of the through rate?

X. 84. Of course you did not mean to say that the local rate, I mean the l. c. l. rate from point of origin to the point to which you ultimately ship the flour is less than the car load rate, Nashville to that point, do you?

A. I did not say that.

X. 85. That is what it sounded to me like.

A. If I said that I just don't know what the English language is.

X. 86. Let me ask the question. Did you mean to say that?

A. I did not mean to use the word combinations, at all.

X. 87. That is exactly what I said, you did not mean to say that. What you mean to say, is that the rate, when you ship it from here to point of destination is less than the rate from the point of origin to your plant in car loads, plus the l. c. l. rates from here to point of destination?

A. I say it is cheaper to ship it from Nashville on the balance of the through rate than it is to ship from Nashville to destination on the local rate.

X. 88. Plus the rate from point of origin to Nashville?

A. I did not say anything of the kind. I said it was cheaper to ship it from Nashville on the balance of the through rate to destination, than to ship out of Nashville on the local rate to point of destination from Nashville.

X. 89. Because you have already paid the freight from the point of origin of the flour to Nashville, have not you?

A. I have got the flour in Nashville.

X. 90. That is it.

A. It cost me a certain amount of dollars and cents to get it there, then add the balance of the through rate it would be less than if I had to add the local, my cost to destination would be the local if we did not have the privilege.

X. 91. Certainly. No question in the world about that. That is the reason you want the privilege, is not it?

A. Sure.

X. 92. Now, does that same situation apply to mills grinding wheat?

A. So far as I know, yes.

X. 93. Where? Located where?

A. Nashville.

X. 94. Any other points than Nashville?

A. Evansville, Louisville.

X. 95. Does it apply to all mills grinding wheat in the territory, south of the north bank of the Ohio River and east of the Mississippi River?

X. 96. It applies to all mills?

A. I believe so.

X. 97. By that you mean the mills can bring the wheat from point of origin, of the wheat, into their plant, and there mill the wheat, put it up and ship it out in any quantities on an any-quantity rate from point of origin of wheat to point of destination just as you can do with the flour?

A. If the Ohio River is the basic point. I think that enters into it.

X. 98. I am talking about, it applies to the mills in the territory south of the North bank of the Ohio River and east of the Mississippi River?

A. Yes, they get the balance of the through rate to destination.

X. 99. Mills north of the Ohio River and West of the Mississippi River, do not have that privilege, do they?

A. I don't believe they do.

X. 100. Can you give us some idea, Mr. Tupper, in dollars and cents, about what the advantage in actual cost of laying that flour down at destination in these southeastern states, with any quantity milling in transit privilege gives you over mills, and by mills I mean actual grinders of wheat, in the territory north of this Ohio River and west of the Mississippi River?

A. No, I could not even estimate that. I could get the figures up if you want me to.

X. 101. I would like to have it. Does not it give you an advantage of somewhere from forty to eighty cents a barrel?

A. By no means, I don't think so.

X. 102. That has been my idea?

A. I think it comes up pretty high in certain spo-

radic instances, but as a general rule no, I just think not, but I have a way to get the dope if you want it.

X. 103. What would be your best idea as to what it was?

A. I should not say it would average more than forty cents a barrel, that is purely a guess.

X. 104. Would you get that information for me? I would like to have the information.

A. Would not it be better to get it from a real tariff man?

X. 105. Can you get it?

A. Yes.

X. 106. I have been under the impression, frankly, you have an advantage of from forty to eighty cents, depending of course upon the point to which the flour ultimately went, forty to eighty cents per barrel over the mills in Missouri, Indiana and Illinois.

Mr. Malone: He will get it.

X. 107. You might also, at the same time while you are getting that, Mr. Tupper, since you seem to be somewhat uncertain on how the rate works, get that man to check up with you as to whether you have got that description of the way the things works is absolutely right, whether it is the balance of the through l. c. l. rate you pay, or the balance of the c. l. rate.

A. There are some men in the room who can give you that. I do not attend to that at all.

X. 108. Most of the merchants, Mr. Tupper, in this southeastern territory, a considerably larger proportion of them, buy in L. C. L. quantities, don't they?

A. Decidedly so.

X. 109. And that any quantity milling in transit privilege is of great benefit and a great advantage to the so-called blenders here in Nashville, is not it?

A. Yes.

X. 110. Your sales are mostly to the jobbers and wholesalers, are not they?

A. I should say that the greater part of our business goes to the retail trade, lately, the last two or three years, to a far greater extent that I would like to, but it has been forced upon me by necessities of competition. But, in so far as I can, I restrict my trade to wholesalers and jobbers.

X. 111. These papers that were introduced by Mr. Malone through you, that you received from the Census Bureau, were those the last such papers you received, or the latest you received?

A. They must be, or I believe I would have sent Mr. Malone any later ones.

X. 112. The Bureau of the Census makes up such reports as are referred to in those papers, yearly, does not it?

A. I don't know.

X. 113. You do not know whether it makes up reports on manufacturing and manufactures each year?

A. I am just giving you, I don't know.

X. 114. You told us this morning that some mills take four and one-half bushels of wheat, I think you said, to make a barrel of flour, 196 pounds?

A. Yes, sir.

X. 115. Don't some mills make a barrel of flour with less than that?

A. One of my stockholders who owns a very large milling plant at Bardstown, tells me they make it on 425 pounds. I honestly believe if you will investigate, that the majority of the mills use more than four and one-half bushels, they figure on four and two-thirds bushels. I will give you Mr. Sparks' cost sheet, given me the other day, trying to boost the price I was offering for his flour, showing me it was 4.213 bushels, that it was impossible to be below a figure of 4.213 bushels. Whether he was doing that just for selling purposes to me or not, I don't know. They put it down at about 4.3 in actual milling.

X. 116. You do not know whether he was boosting it or not?

A. No, of course not.

X. 117. Do you know of any mills making a barrel of flour out of four bushels of wheat, do you?

A. No, I do not. That would be inconceivable, would not it, except a whole wheat flour?

X. 118. I don't know.

A. Because the bran, fiber, and all that must come out.

X. 119. I do not know what it amounts to in ordinary wheat. I do not know whether there is enough difference in different characters of wheat to make that difference. I am getting the opinion from you.

A. I will give you as much as I have, but that is not altogether perfect.

X. 120. As I understand from the figures you gave this morning, Mr. Tupper, to your counsel, about your business, etc., you have to figure and sell very close to your cost?

A. Yes.

X. 104. Would you get that information for mee? I

X. 121. Your profit is very, very small?

A. Because I have to go to the jobbers.

X. 122. What?

A. Because I have to go to the jobbers.

X. 123. Well, you have to figure on a very close profit, very small profit, don't you?

A. Yes.

X. 124. That is largely the result of competition, you have to meet, is not it?

A. I think that is obvious, yes.

X. 125. After your mill burnt down, or the mill you were connected with, burnt down, you did not rebuild the mill?

A. No, sir.

X. 126. You just continued as a so-called blending plant?

A. I built a new plant, strictly adapted to the so-called blending and manufacturing of self-rising flour.

X. 127. Manufacturing self-rising flour. And you have been in that, blending and making a portion of self-rising flour ever since?

A. Yes, sir.

X. 128. When did you adopt or begin the use of the name Cumberland Valley Milling Company, if that is the correct name?

A. I could not say exactly. There was a young man by the name of W. J. Miller, who told me that he would like to have me put up his flour, and that he was going to put it out under the name of the Cumberland Valley Milling Company. I told him to go ahead and I would handle his business on a very close margin of profit. He carried it on, and then he took a position of auditor somewhere. In the meanwhile he had built up some business under that name of Cumberland Valley Milling Company for flour, and I carried it on.

X. 129. Can you tell me approximately when that was?

A. Quite a number of years ago.

X. 130. Before the war?

A. Yes, sir.

X. 131. You mean before we got into the war?

A. Yes, sir.

X. 132. We declared war in April, 1917.

A. Yes.

X. 133. Before that time?

A. That is my recollection, it was before that time, yes.

X. 134. But, not very long, any how?

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A. It was a number of years ago.

X. 135. What about the Bele Meade Milling Company, when did you begin using that?

A. That was about four years ago.

X. 136. Did you adopt that under somewhat similar circumstances, you adopted the Cumberland Valley?

A. No, sir; I just adopted it as a trade name.

X. 137. Just arbitrarily adopted it as a trade name?

A. Yes.

X. 138. The Red Mill, the nickname you refer to, I believe?

A. That is really what it is, just a nickname.

X. 139. Has been applied to the Nashville Roller Mills ever since its organization, when it operated the actual mill?

A. I can tell you the origin if you want it.

X. 140. Just answer the question. In other words, what I am getting at, the Red Mill, has run down with whatever right, or whatever good-will may attach to the Nashville Roller Mills, from the time it rolled or actually ground wheat, comes along into the Red Mill?

A. That is right.

X. 141. The Nashville Roller Mills nickname, the Red Mill, was used at the time it actually operated a grinding plant.

A. That is right. The minute I began business I called it the Red Mill.

X. 142. Why was that?

A. Because it was a red mill, and I had seen a show in New York I liked, called the Red Mill, and I put it on the letterhead. That is one date I remember, I was on my honeymoon in 1907 when I saw the Red Mill and determined if I had anything to do with the mill I would call it the Red Mill. That is how I happened to call it Red Mill, and painted it red.

X. 143. Everything at that time looked rosey?

A. Much better than it looks right now.

X. 144. You gave the concerns that you had sold flour to this morning, that were real mills.

A. I said it was my information they were real mills.

X. 145. Yes, I mean from your information. You did not say anything, or give us any idea of the quantity of those sales. Can you do it now from the memorandum you had?

A. No. I just had a memorandum of the names. There was only one real big sale that I made to wheat mills, that was in the neighborhood of six years ago.

X. 146. The other sales you refer to were really small sales?

A. Small sales.

X. 147. Small quantities?

A. Small quantities, yes.

X. 148. How did you come to get out of the National Association of Soft Wheat Millers?

A. The Soft Wheat Millers Association. It has since been changed to National Soft Wheat Millers Association.

X. 149. How did you get out?

A. I resigned from the vice-presidency in 1925 or 1926, after being vice-president since the time it was instituted, up to the time I resigned.

X. 150. When was it instituted?

A. I think in 1923.

X. 151. Why did you resign?

A. Because it was too heavy a tax. One year, for instance it cost me $952.00 a month. I was taxed beyond any advantage I received from it.

X. 152. You think you did not derive enough benefit from it?

A. No, sir.

X. 153. Don't you think your not operating a mill had anything to do with your resignation?

A. Not at all, because I had offered my resignation while vice-president, and they would not accept my resignation from membership.

Mr. Bane: Mr. Examiner, I think that is all.

Examiner Sheppard: Anything else, Mr. Malone?

Redirect Examination by Mr. Malone.

RD. 1. You mention Mr. Sparks in your cross-examination furnishing you a cost sheet. Who is he?

A. He is the head of the Sparks Milling Company of Terre Haute Indiana.

RD. 2. You spoke of making sales in small quantities to the grinding mills. Can you give us some idea of those sales?

A. Well, in fifty-five barrel lots, which I do not consider a large sale. There was only one very large sale, that was a sale of four thousand barrels to the City Mill of Columbus Georgia, and they buy frequently in the fifty-five barrel lots and up.

RD. 3. Now, Mr. Bane read something to you about Mr. Kelly, from the report of the Nashville Flour transit

case. I will ask you if the Liberty Mills did not intervene in that case, taking the same position as the so-called blenders?

A. Yes, that is my recollection.

Examiner Sheppard: Just one question, I have something in my mind. It seems to me that you so-called blenders or manufacturers or mixers, buy great quantities of flour from the grinders, don't you?

A. Yes, sir.

Examiner Sheppard: Then, I understand from your testimony and the testimony of others, that on occasions you do sell back to them again?

A. No, that never has happened. You mean the same mill I bought from?

Examiner Sheppard: No, from some other mill and you sell your product back to a grinding mill?

A. No, I never have sold my product, except to those I have mentioned, and in not a single case have I ever bought them. There may be cases of that, Mr. Examiner, but I don't know.

Examiner Sheppard: I was not picking out any special mill, But, just as a rule you blenders buy from the grinders?

A. Yes.

Examiner Sheppard: And then sometimes the grinders buy from you again, as you have just told Mr. Bane about the shipments?

A. Yes, grinders buy from me.

Examiner Sheppard: Not only you, but other blenders?

A. Yes.

Examiner Sheppard: Am I right on that?

A. Yes. I just did not understand. I thought you meant the same mills I bought from.

Examiner Sheppard: No. No. You may get it from one grinder and then sell to some other grinder.

A. Yes, sir.

Recross-examination by Mr. Bane.

RX. 1. When you say you sell back to the grinder, do you sell your product back to the mills? Do you mean by that, when you sell back to the mills you referred to, is self-rising flour?

A. I don't sell back to any mill.

RX. 2. I mean, what you sold to the mill is the self-rising flour?

A. In the majority of instances it is plain flour.

RX. 3. Was it plain flour that you had done what you call processing or plain flour in your warehouse, which has not gone through your operation?

A. It went through the self-rising batch mixer.

RX. 4. In other words, you had put it through the process through which you put flour?

A. Yes.

RX. 5. I just want to get what you mean by product.

A. I had to do that, to get my transit privilege, at least I so understood.

Examiner Sheppard: All right.

Redirect Examination by Mr. Malone.

RD. 1. What do you consider the ultimate test of flour, the baking test or what?

A. Yes, the baking test is the ultimate test.

RD. 2. That is the proof of the pudding, as the old saying is?

A. Yes, sir.

Mr. Malone: That is all.

Examiner Sheppard: Anything else, Mr. Malone?

Mr. Malone: I think, Mr. Examiner, that closes the respondent's case, with the exception of any stipulation that Mr. Bane and myself may hereafter make applying to all of the cases, which may be necessary to include in this case.

Examiner Sheppard: I understand.

Mr. Bane: I understand that when I closed my case, I said there were a couple of matters to be stipulated. I suggest that we both close the case subject to Mr. Malone and myself drawing a stipulation, after he has checked

up on the matter, and send a copy of it to the reporter with instructions to incorporate it at the end of the record, which he has not yet transcribed.

Examiner Sheppard: That is all right.

Mr. Bane: There is also a stipulation about the number of real mills selling in the southeast. Are you prepared to do that, or want to include that later?

Mr. Malone: I think you checked the matter and I am willing to stipulate your figures.

Mr. Bane: It is stipulated that there are approximately one hundred seventy mills actually grinding wheat into flour and selling in the southeastern territory.

Examiner Sheppard: Do you agree to that stipulation?

Mr. Malone: Mr. Bane has gotten up those figures. He told me how he got them up. I of course take his statement about it.

Examiner Sheppard: You may stipulate that into the record.

Mr. Bane: There is another about Mrs. Bainbridge.

It is stipulated between counsel that if Mrs. Estell Bainbridge of 807 Fatherland Street, Nashville, Tennessee, were called and appeared upon the witness stand, she would testify in substance the same as Mrs. Julian C. Green of Nashville, Tennessee, who was called and appeared on behalf of the Commission at the hearing in Nashville on the 10th of January, 1930.

Now, the only stipulation that leaves out, so far as the Commission's case is concerned, is with respect to the stipulation that the merchants, both wholesale and retail that were called by me, or a certain number of them, practically all of them were called from a list of their customers furnished by Mr. Malone, and Mr. Malone and I will check up the exact number.

Examiner Sheppard: Then, gentlemen, I am to understand that with that stipulation, which, after agreed to, will be forwarded to the reporter, who will incorporate it into the record.

Mr. Malone: And as I have stated, Mr. Examiner, any additional facts affecting these cases, which also affect the pending case, will be included in that stipulation.

Examiner Sheppard: All right, gentlemen, I will proceed to formally close this case. And, Mr. Malone, you will especially listen to these instructions, because they cover our proceedings in the case from now on.

Our rules provide that ten days after I obtain one of the records through our regular channels, that I make a

finding of fact on this case. Sometimes we can follow this and sometimes we cannot, according to the exigencies of our business. In the instant case, however, I won't be returning to Washington before the first of February, so it will be after that time that I can give any consideration to this case at all, and I want to promise you and Mr. Bane, both, that I will do so with as much promptness as I can after I get the record.

Now, after I make my findings in the case, a copy will be served upon you and upon Mr. Bane. You have ten days in which to take exceptions, and so does he. Any exceptions you have, you serve upon Mr. Bane a copy, and any exceptions that he has will be served upon you. Then, as to the filing of briefs in this case, because you realize that the matter will come up sooner or later before the Commission for final argument, the date of which will be hereafter set, you will be given notice thereof. I believe it is our custom to allow thirty days.

Mr. Bane: Thirty days after service for the Commission's brief, and I think respondent has twenty days from the day he gets the copy of the Commission's brief.

Examiner Sheppard: I think it is thirty days all around. I think the rule has been changed to that effect. Do you understand that, Mr. Malone?

Mr. Malone: I understand it, Mr. Examiner.

Examiner Sheppard: And Mr. Reporter, you can, with those remarks, finally and formally close this proceeding.

Mr. Bane: Just a moment. In view of the reference made several times by Mr. Malone to the Southeastern Millers Association in this proceeding, I would like to state, Mr. Examiner, that the Southeastern Millers Association have taken no part in this proceeding, nor has any member of the Southeastern Millers' Association been advising me during the conduct of the hearings. So far as I know, no representative of the Southeastern Millers Association has been in the room, with the exception that possibly Mr. Malone put on the stand some members from the Southeastern Millers Association on yesterday afternoon. I think there were two or three in the room, and the secretary of the Association.

I merely want to state that, because of the reference made various times by Mr. Malone to the Southeastern Millers Association, of what he thought was their activity in the case.

Examiner Sheppard: Any thing else, Mr. Malone?

Mr. Malone: That is Mr. Bane's statement, which is, of course entirely satisfactory to me.

Mr. Bane: I will say I have gotten most information as to the flour industry from those who have been here, and they have all been, as I understand, blenders, than I have from any other source, whatsoever.

Examiner Sheppard: The hearing will now be declared formally closed.

(The hearing thereupon, at 3:00 o'clock p. M., adjourned.)

Note: On January 23, 1930, the Reporter communicated with Mr. Malone, Counsel for Respondent, in reference to the stipulation to be filed as a part of the record. Mr. Malone advised the reporter that the stipulation had not yet been drafted, that it would be quite lengthy with numerous exhibits, and that he and Mr. Bane, counsel for the Commission would agree to the stipulation later. The record is accordingly closed without the inclusion of the stipulation.

MEMORANDUM FOR DOCKET SECTION.

Re—Docket No. 1601.

Some months ago this case was formally closed in the City of Nashville, Tennessee, but was held up temporarily because it was necessary to obtain stipulations covering the following other Dockets, to wit; Dockets 1597-1598-1599-1600-1602-1604. I have been advised by the Commission's attorney and by Commission memorandum dated May 16, 1930, that said stipulations have been obtained and are of record.

Your office is therefore advised that the case is for mally closed and ready to be transmitted to the Chief Trial Examiner for the purpose of making Findings of Fact thereon.

Respectfully,

W. W. Sheppard,

May 27, 1930. Trial Examiner.

Copies of stipulations for Dockets 1597-1598-1599-1600-1602-1604 have been received in Docket Section. Attorney Bane states that the stipulation referred to on pages 1118 and 1121 of the record is included in those stipulations, and that no stipulation is necessary in Docket 1601.

CLERK'S COPY.

VOL. II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 393

FEDERAL TRADE COMMISSION, PETITIONER

vs.

ROYAL MILLING COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 23, 1932
CERTIORARI GRANTED OCTOBER 24, 1932

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In the matter of

ROYAL MILLING COMPANY, et al.

PART 4.

Pleadings in Dockets 1598, 1599, 1600, 1601, 1602, and 1604, certified with the record in Docket 1597.

(Seal)

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION

In the matter of D. V. Johnson, doing business under the name of "Tennessee Grain Co. and Tennessee Milling Co."	Docket No. 1598.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that D. V. Johnson, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: Respondent, D. V. Johnson, is an individual doing business under the name of "Tennessee Grain Co. and Tennessee Milling Co." Respondent for four years last past has conducted in the City of Nashville, Tennessee, a business of buying and selling grain, buying wheat flour from millers and mixing it with other ingredients to produce the commodity known to the public as self-rising flour; and to a small extent, representing a small percentage of his entire business, grinding grain for feed for stock and for whole wheat flour. In the conduct of his business aforesaid, respondent purchases wheat flour from millers throughout the Middle West, which he causes to be transported to his place of business in the City of Nashville, where it is blended and mixed with certain chemical leavening agents, such as baking powder. Respondent has solicited orders for blends and mixtures so produced from dealers in States other than the State of Tennessee, and contracts to sell and deliver and does sell and cause to be transported to purchasers outside the State of Tennessee flour so mixed by him. The respondent has been and is in competition with individuals, partnerships and corporations likewise engaged in the business of selling self-rising flour in interstate com-

merce, who either grind the flour they mix with other ingredients, or purchase the flour they use in mixing, as above described, and do not represent that they grind flour.

Paragraph Two: Respondent, in the carrying on of his business as aforesaid, solicits and sells his products principally through the mail service. The letterheads and invoices used by respondent in his business bear the statement, "Manufacturers of Soft Wheat Flour."

Paragraph Three: In the course of his business respondent delivers various brands of self-rising flour produced by him to purchasers in sacks on which are displayed the names and designs or brands adopted by him for the different blends, and the words "Tennessee Grain Company" and "Tennessee Milling Company," and the words "Patent Flour," or "Self-rising Flour," or both.

Paragraph Four: Respondent owns or operates no mill of machinery other than devices for mixing flour purchased by him with other ingredients for self-rising flour as above described, and machinery for grinding a small amount for feed and whole wheat flour.

Paragraph Five: The use by respondent of the names "Tennessee Grain Company" and "Tennessee Milling Company" in his business, and the representations in his business correspondence and otherwise, as aforesaid, have the capacity and tend to lead dealers and prospective purchasers of self-rising flour to believe that in purchasing his products they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman or any element of cost of a middleman's profits, and to induce purchasers of his flour by dealers and prospective purchasers on that understanding and belief; and said practices constitute unfair methods of competition with millers and manufacturers of flour likewise engaged in interstate commerce who grind the flour they offer for sale, or mixed as self-rising flour, and with producers and sellers of self-rising flour, likewise engaged in interstate commerce, who do not grind and manufacture but buy and sell flour made by others in their product and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and producers of self-rising flour, in that said practices of respondent tend to take away their business by false representations.

Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent

and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approve September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission, on this 19th day of April, A. D. 1929, now here issues this its complaint against respondent.

NOTICE.

Notice is hereby given you, D. V. Johnson, respondent herein, that the 3rd day of June, A. D., 1929, at 10:30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Commission, in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required within thirty (30) days from service of the complaint, unless such time be extended by order of the Commission, to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answers and failure to answer (Rule III) provide as follows:

> (1) In case respondent shall desire to contest the proceeding such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.
>
> (2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respon-

dent an order to cease and desist from the violation of the law alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 19th day of April, A. D., 1929.

By the Commission:

Otis B. Johnson,
Secretary.

(Seal)

THE ANSWER OF D. V. JOHNSON TO THE COMPLAINT IN THIS CAUSE FILED AGAINST HIM —Filed May 20, 1929.

Respondent for answer says:

Answering Paragraph One:

1. It is true that respondent D. V. Johnson is doing business in Nashville, Tennessee, under the name of "Tennessee Grain Company and Tennessee Milling Company," but the duration and nature of said business is not correctly described in the complaint, the fact being that the Tennessee Grain Company was incorporated about 1906, and that its charter was surrendered about 1912, the said D. V. Johnson assuming all liabili-

ties and taking over all assets; that said corporation was organized by the said D. V. Johnson for the handling of grain; that thereafter, about the year 1920, machinery was installed for the grinding of feed and whole wheat flour; that still later other machinery was installed for the manufacture of self-rising and processed flour; that the words "and Tennessee Milling Company" were added to respondent's trade name because the original corporate and trade name had become confused with similar trade names of other individuals thereafter going into business in this vicinity, and because it was properly descriptive of the business carried on by respondent.

2. Respondent admits that he is engaged, as part of his business, in the grinding of grain for feed for stock and for whole wheat flour, but denies that his is a small percentage of his business.

3. Respondent denies that the process of making self-rising flour is correctly described in the complaint, and avers that said process is both a milling and a manufacturing process, whereby, through the use of machinery, flour and other ingredients are turned into a distinct product.

4. Respondent admits that he has solicited orders for the product so manufactured from dealers in States other than Tennessee, and that he sells and causes to be transported the product so manufactured to purchasers outside the State of Tennessee.

5. It is admitted that others compete with respondent in the sale of self-rising flour, but respondent is without knowledge as to whether these competitors are individuals, partnerships, or corporations, or as to what extent, if any, they are engaged in interstate commerce.

6. Respondent denies that those of said competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with respondent, and on the contrary avers that they, to a greater or less extent, buy flour which they make into self-rising flour by the same process used by respondent, and put out this product in their own bags and under their own brands, and respondent insists that "unfair competition" cannot be claimed for their protection, as hereinafter shown. Respondent is without knowledge of any so-called "blenders" of self-rising flour in competition with respondent who "do not represent that they grind flour," as alleged in the complaint.

Answer of D. V. Johnson to the Complaint, etc.

Answering Paragraph Two:

1. Respondent denies that in carrying on his said business he sells and solicits his products principally through the mail service.

2. Respondent admits that the letter heads and invoices used by respondent, or which have been used by respondent, in his business, bear the statement "Manufacturers of Soft Wheat Flour," the explanation being that respondent is both a miller and manufacturer of soft wheat flour in producing self-rising flour and processed flour, and that these words were used without any intent to deceive, and without any deception of his customers or prospective customers.

Answering Paragraph Three:

It is admitted that in the course of his business respondent delivers various brands of self-rising flour, produced by him, to purchasers in sacks on which are displayed the names and designs, or brands adopted by him, for his manufactured product, and also the words "Tennessee Grain Company" and "Tennessee Milling Company," and the words "Patent Flour," or "Self-rising Flour," or both, the explanation being that the names above shown together constitute his trade name, and the words "Patent Flour" having a technical meaning, well understood in the trade, and having no tendency to make respondent's customers, or any one conversant with the flour business, believe that respondent was himself grinding such flour.

Answering Paragraph Four:

Respondent denies that his plant and machinery is correctly described in this paragraph of the complaint, in so far as it is alleged that respondent owns devices for mixing self-rising flour, the fact being, as hereinbefore set out, that self-rising flour is a manufactured product, produced by the operation of milling machinery. Respondent admits that he owns machinery for grinding feed and whole wheat flour, but denies that this is a small amount. Respondent avers that the value of his plant is approximately $50,000.00, and that the amount of his investment to carry on business is approximately $250,000.00.

Answering Paragraph Five:

1. Respondent denies the statement that the use by respondent of the names "Tennessee Grain Company" and "Tennessee Milling Company," in his business, and the conclusion that the representations in his business correspondence and otherwise (no facts being stated) have the capacity, and tend to lead dealers and prospective purchasers of self-rising flour to believe that in purchasing his products they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman, or any element of cost of a middleman's profits, and to induce purchases of his flour by dealers and prospective purchasers on that understanding and belief, as alleged in the complaint.

2. Respondent avers that the wheat "miller" does not, and cannot, make self-rising flour by the use of his grinding machinery, but is compelled to first get his raw flour, either by grinding or purchase, and then by a separate milling process, and by separate machinery (practically the same as that used by this respondent) turn it into self-rising flour. The "miller" who grinds his own flour has no advantage thereby, for he must absorb the local crop of wheat, which may or may not be good, whereas the so-called "blender" can buy the best flour wherever it is produced, and can buy such flour at actual cost. The explanation of this is that by selling their surplus at actual cost the wheat-grinding millers from whom he purchases are enabled to keep their mills going night and day, thus greatly reducing cost.

3. Respondent avers that there is no "middleman's profit" involved unless the self-rising flour which has been manufactured, as aforesaid, in the same way by both "miller" and "blender," is sold through a jobber; and where this is not done, and where the sale is made direct to the retailer, middle man's profits on self-rising flour are in fact eliminated.

4. Respondent further avers that the so-called "miller" has no advantage as to cost of manufacture, for it costs him as much, or practically as much, to manufacture his raw flour as it does for respondent to buy his raw flour, which he obtains very cheaply for the reason hereinbefore stated. The production of self-rising flour is, as aforesaid, a separate milling process, as to which the so-called "miller" has no advantage, but is rather at a disadvantage.

5. Respondent further denies that said practices con-

stitute unfair methods of competition with millers and manufacturers of flour, alleged to be engaged in interstate commerce, who grind the flour they offer for sale alone, or mixed, as self-rising flour, and with producers of self-rising flour alleged to be engaged in interstate commerce who do not represent themselves to be millers or manufacturers of flour, as alleged in the complaint.

Respondent further denies that he is in competition with any sellers of raw or plain flour, and denies that he claims to be a manufacturer of plain flour, and denies that his customers believe him to be engaged in the manufacture and sale of plain flour.

6. Respondent denies that he has made any false representations to the injury of said "millers" and producers of self-rising flour, and that he has taken away their business by false representations, as alleged in the complaint.

7. Respondent denies that said acts and practices, alleged to have been committed by respondent, are all to the prejudice of the public, and constitute unfair methods of competition within the meaning of the Federal Trade Commission Act, and avers on the contrary that this proceeding, which is in fact (although not intentionally) in the interest of a few private individuals, is to the injury of the public, and not within the spirit or letter of the Act.

Answering The Whole Complaint, respondent, in addition to the defenses hereinbefore set out, for further defense says:

1. Respondent denies that the complainant, the Federal Trade Commission has jurisdiction of this proceeding.

2. Respondent denies that this proceeding falls within or is covered by the said Act of Congress creating the Federal Trade Commission.

3. Respondent denies that this is a proceeding in the interest of the public, and insists that the practices described in the complaint do not substantially tend to affect the public to its injury.

4. Respondent insists that this proceeding, so far from being in the interest of the consuming public, is in fact (although not intentionally) in the interest of a few private individuals, competitors of respondent; that the effect of sustaining this proceeding will be to injure the respondent and make his competition less effective, in that he will be charged by said competitors with fraudulent and willfully unfair practices; and that the effect of so reducing the competitive power of respondent will

be to ultimately raise the price to the consuming public to its injury.

5. Respondent further states that the use, by him, of the words "milling" and "manufacturer" has been and is in good faith, and under claim of lawful right, and is justified by the strictest interpretation of the terms, in that respondent, as part of his business, is engaged in grinding feed and whole wheat flour; that no fraud or deceit of any kind has been practiced on the public (none being charged in the complaint); that there has been no substitution by respondent of an inferior for a superior article, to the injury and deception of the consuming public; that the wheat "miller" does not manufacture self-rising flour by the use of his grinding mill, but by the same process as that used by respondent manufacturers the same self-rising flour, which is in no wise superior to the product of respondent, but which is more apt to be inferior.

6. Respondent is without knowledge of any producers of self-rising flour (so-called "blenders") who claim to have been injured in competing with respondent by the use of the words "Milling" or "Manufacturer," and denies that any persons claiming to be injured are his competitors, but alleges on the contrary that the competitors who are objecting to the use of said words by respondent are individuals, firms, or corporations, owning wheat-grinding mills, but also engaged in the manufacture and sale of self-rising flour in competition with respondent.

With respect to such competitors, respondent insists that they are guilty of the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondent is advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors who are themselves engaged in the same practices condemned by the complaint.

7. Respondent avers that his sales are made to customers who are familiar with his methods, and that none of his customers are in fact deceived or misled into thinking that he operates a wheat-grinding mill, and respondent avers that it would not be to his advantage if they did think so, because better self-rising flour can be made by the so-called "blender." The "miller" is to a large extent dependent on the local crop, but respondent can buy wherever the crop is best.

8. Respondent denies that he has represented or led his customers or the public to believe that middleman's profits are excluded, etc., as alleged in the complaint. This charge is a mere unwarranted inference or conclusion without facts alleged to support it.

9. Respondent avers that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October, 1916, handed down an opinion, which remains of record, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondent submits that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors.

10. Respondent for further defense submits that the complainant Federal Trade Commission, after ex parte investigation, has prejudged this case on questions of fact which are of vital, if not controlling, importance, in that its authorized agent, acting in its behalf, has in writing stated that said Commission was of the opinion that respondent is not engaged in a manufacturing or milling process.

Respondent does not charge any bad faith or intentional unfairness on the part of the Commission, but submits that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that this respondent is thereby denied due process of law in this proceeding.

And respondent further submits that if the Federal Trade Commission Act is to be construed as authorizing such procedure such portion of said Act contravenes the Fifth Amendment to the Constitution of the United States, in that the Federal Trade Commission is not only undertaking to act at the same time as litigant and judge —which is contrary to the fundamental maxim that no man shall be a judge in his own case—but its findings of fact, although erroneous and contrary to the weight of

the evidence, are conclusive if supported by any material evidence, and for this reason a full review of its action by an impartial tribunal is denied, and litigants are thereby deprived of their property without due process of law.

11. Respondent further avers that he has no wish, and has never had any wish or intention, to use unfair methods in competition, and has never used the words "Milling" or "Manufacturer," or any other words mentioned in the complaint, with any intent to deceive or make false representations of any kind, being advised on the contrary that said words are truthful and fully authorized under the facts hereinbefore set out; and respondent submits that he should not be required to give up the trade name under which a valuable good will has been acquired; that this would inflict an unnecessary loss and hardship on respondent, and would in no wise benefit the public.

12. Respondent further states that he and other Nashville manufacturers of self-rising flour and processed flour supply a trade which is accustomed to buy in small quantities, and such service is an economic necessity in said territory and in the interest of dealers and of the consuming public, and enables consumers to obtain these products at a lower price than would be possible if such service were withdrawn or discontinued.

Respondent further avers that all self-rising and processed flour is of the same general type, whether manufactured by the so-called "millers" or the so-called "blenders," and that competition between them can only be determined, and is in fact determined, by three factors, to-wit, price, quality, and service. The grinding of flour in a particular mill is not, and cannot be, a factor.

Wherefore, respondent having fully answered, prays that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondent,
Suite 1012 Nashville Trust
Building,
Nashville, Tennesse.

AMENDED COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that D. V. Johnson, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: Respondent, D. V. Johnson, is an individual doing business under the name of "Tennessee Grain Co. and Tennessee Milling Co." Respondent conducts in the City of Nashville, State of Tennessee, a business of buying and selling grain, and to a small extent, representing a small percentage of its entire business, grinding grain for feed for stock and for whole wheat flour; and buying various lots and grades of wheat flour from mills located in the Middle West which respondent causes to be transported to his place of business in the City of Nashville and there blending and mixing the flour so purchased by him and putting up in sacks and offering for sale the mixtures or blends resulting therefrom, in some instances adding leavening agents such as baking powder to the blends or mixtures producing the commodity known as "self-rising flour." Respondent solicits orders for the blends and mixtures so produced from dealers in States other than the State of Tennessee and contracts to sell and deliver and does sell and cause to be transported to purchasers outside the State of Tennessee flour so mixed by him. Respondent has been and is in competition with individuals, partnerships and corporations likewise engaged in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour; or purchase the flour they offer for sale, whether as plain or self-rising, and do not in their trade names or otherwise in the conduct of their business use the terms "mill," "mills," "miller," or "milling" or otherwise represent that they ase engaged in the manufacture of flour as above described. Respondent in carrying on his business as aforesaid solicits orders and sells his products largely to retail grocers through the mail service.

Amended Complaint

Paragraph Two: Respondent in carrying on his business as aforesaid uses letterheads and invoices on which appears the statement, "Manufacturers of Soft Wheat Flour."

Paragraph Three: In the course of his business respondent delivers various brands of flour to purchasers in sacks on which are displayed the names and designs or brands adopted by him for the different blends or mixtures, and the words "Tennessee Grain Co. and Tennessee Milling Co.," and the words "Patent Flour," "Plain Patent Flour," or "Self-rising Flour."

Paragraph Four: Respondent owns or operates no mill or machinery other than devices for blending or mixing the lots and grades of flour purchased by him from millers as above described, and machinery for grinding a small amount of feed and whole wheat flour. He does not manufacture, by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour, the flour offered for sale and sold by him and owns or operates no mill or machinery fitted for that purpose.

Paragraph Five: The use by the respondent of the name "Tennessee Grain Co. and Tennessee Milling Co." in his business and the representation in his business correspondence and otherwise as aforesaid have the capacity and tend to lead dealers and prospective purchasers of plain or self-rising flour to believe that in purchasing his products they are buying flour direct from a miller or manufacturer of flour as above described and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of his flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce who make, as above described, the flour they offer for sale and with sellers of flour likewise engaged in interstate commerce who do not so manufacture the flour but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondent are false and misleading and tend to take away their business.

Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled

Amended Complaint

"An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission, on the 3rd day of September, A. D., 1929 now here issues this its amended complaint against respondent.

NOTICE.

Notice is hereby given you, D. V. Johnson, doing business under the name of "Tennessee Grain Co. and Tennessee Milling Co.", respondent herein, that the 4th day of October, A. D. 1929, at 2 o'clock in the afternoon is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required on or before said date, to file with the Commission as answer to the complaint. If answer is filed appearance on that date will not be required and the hearing on the charges will be postponed to a later date, due notice of which will be given. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule III) provide as follows:

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint) file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegations of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding

or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to appear to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, The Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C. this 3rd day of Sptember, A. D., 1929.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

ANSWER TO AMENDED COMPLAINT—Filed Oct. 3, 1929.

The Answer of D. V. Johnson to the Amended Complaint in this cause filed against him.

Respondent for answer says:

1. It is admitted that the respondent D. V. Johnson is an individual, doing business in Nashville, Tennessee under the name of "Tennessee Grain Company and Tennessee Milling Company." It is denied that he is engaged merely in blending and mixing flour, and adding leavening ingredients thereto, so as to make self-rising flour; but on the contrary, this portion of respondent's business consists in the production of "processed" and

"self-rising" flour by a milling and manufacturing process.

2. It is admitted that respondent contracts to sell, and sells and delivers his products outside the State of Tennessee.

3. Respondent admits that he is in competition with others in making and distributing said products, but is without knowledge as to whether they are individuals partnerships, or corporations, or as to whether they are engaged in Interstate Commerce, or as to whether they manufacture the flour sold by grinding or crushing wheat, or as to whether they purchase the flour which they offer for sale, and do not, in their trade names, or otherwise, use the term "Mill," "Miller," or "Milling," or otherwise represent that they are engaged in the manufacture of flour, etc., as alleged in the complaint.

4. Respondent denies that he solicits orders and sells his products largely to retail grocers through the mail service.

5. Respondent denies that those of his competitors who are so-called "Millers" grind all the self-rising flour which they sell in competition with respondent, and on the contrary avers that they, to a greater or less extent, buy flour from others, which they make into self-rising flour by the same method used by respondent, and put out this product in their own bags and under their own brands; and respondent avers that the same is true with respect to "processed" flour.

6. Respondent admits that in the conduct of his business, as aforesaid, he solicits orders, and sells his products under the name of "Tennessee Grain Company and Tennessee Milling Company." The Tennessee Grain Company was incorporated by respondent about the year 1906, and its charter was surrendered about 1912, respondent assuming all liabilities and taking over all assets. Said corporation was organized by respondent for the handling of grain. Thereafter, about the year 1920, machinery was installed for the grinding of feed and whole wheat flour. Still later, other machinery was installed for the manufacture of self-rising and processed flour. The words "And Tennessee Milling Company" were added to respondent's trade name because the original corporate and trade name had become confused with similar trade names of other individuals thereafter entering business in this vicinity, and because it was properly descriptive of the business carried on by respondent.

7. Respondent denies that the letter-heads, bags, and

advertising matter, and the statements therein appearing, are correctly described in the complaint.

8. Respondents admits that the words "Milling" and "Manufacturer" are used by him in connection with letter-heads, advertising matter, and bags, in the conduct of his business.

9. Respondent has hereinbefore explained why he assumed and uses the name "Tennessee Grain Company and Tennessee Milling Company."

10. Respondent denies that he owns or operates no mill or machinery other than certain mixing devices, etc., and avers that he owns machinery adapted to the manufacture of self-rising and processed flour, which is both a milling and manufacturing operation, the value of respondent's plant being approximately $————, and of his machinery and equipment approximately $————, and of his investment, capital, etc., approximately $————; or a total investment of approximately $————. Respondent's plant has a capacity of about ———— barrels a day on a twenty-four-hour basis. In 1928 respondent did a business of approximately $————.

It is true that respondent owns no wheat-grinding machinery for the production of flour used in manufacturing self-rising or processed flour.

11. Respondent denies that the use of the aforesaid trade name, with the word "Milling" separately, or in combination with the term "Manufacturer," or any other statements on respondent's letter-heads, bags, etc., has any tendency to make dealers or prospective customers or consumers believe that they are buying flour from a miller and manufacturer without a middle man's profits, etc., as claimed in the complaint.

12. Respondent denies that any false representations are thereby made, and denies that these alleged practices, if proven, constitute any unfair competition with millers and makers of self-rising flour or processed flour, alleged to be likewise engaged in Interstate Commerce, etc.

13. Respondent denies that said alleged actions have the effect of taking away business improperly from said alleged competitors, and on the contrary avers that said conduct, if proven, could have no such possible effect:

(a) Because the so-called "millers" do not and cannot make self-rising flour with their grinding mills, but must first obtain raw flour, either by grinding it, or by purchasing the same, and then turn it into self rising flour.

(b) Because said "Millers" obtain no advantage from making self-rising flour from the flour which they grind, but are rather at a disadvantage, both as to cost of the raw flour, and as to its quality, as will be shown at the hearing.

(c) Because self-rising and processed flour, no matter by whom made or sold, is essentially the same product destined for consumption in a particular region, and the buyers of such flour are governed by only three factors, to-wit; price, quality, and service.

(d) Because there is no pretense in the complaint that self-rising or processed flour made by the so-called "miller" is any better than that manufactured by the so-called "blender," and there is no deception of the public by substituting an inferior for a superior article.

14. Respondent avers that those of its competitors who are "Millers" follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondent is advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors who are themselves engaged, as against respondent, in the same practices condemned by the complaint.

15. Respondent denies, as hereinbefore set out, that the use of the word "Mills," "Milling," or "Manufacturer," misleads, or has the tendency to mislead, any substantial portion of the purchasing or consuming public, in that they may be led to believe they are buying from one who grinds his wheat. But respondent is willing to cut off the possibility of deceiving, or misleading, any purchaser or customer through the use of the words above quoted, and to this end has heretofore offered, and hereby offers, to place on his letter-heads, bags, invoices, etc., in conspicuous lettering the words:

"Not grinders of Wheat."

Respondent believes and states that he is a "miller" and a "manufacturer" in that he turns out a distinct product by the use of milling machinery—but he is not, and does not claim to be, a grinder of wheat, and is willing that this be distinctly and unequivocally stated.

16. Respondent, under the trade name aforesaid, has acquired a valuable good will, and he insists that it would be unjust and inequitable to deprive him of this.

Respondent avers that in 1916 certain interested per-

sons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October 1916 handed down an opinion, which remains of records, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondent submits that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors, thereby depriving respondent of the valuable good will which he has built up.

17. Respondent denies that this proceeding is in the interest of the public, as claimed in the complaint, and alleges on the contrary that said proceeding is actually (though not intentionally) in the interest of a few private individuals, competitors of the so-called "blenders," and that its tendency and effect, if sustained, will be to injure and exploit the consuming public for the benefit of private individuals. Respondent insists that the practices described in the complaint do not substantially tend to affect the public to its injury; denies that this proceeding falls within or is covered by the Act of Congress creating the Federal Trade Commission; and denies that the Complainant, Federal Trade Commission, has jurisdiction of this proceeding.

18. Respondent submits that Section 5 of the Federal Trade Commission Act, and the procedure thereunder, violate the Fifth Amendment to the Constitution of the United States, in that said Federal Trade Commission is not and cannot be impartial, since it acts both as plaintiff and judge in the same proceeding, and because its findings, however erroneous, and however opposed to the weight of evidence, are binding and conclusive on review if supported by any material evidence, and thus a full review by an impartial tribunal is denied, and the litigants before said Commission are thereby deprived of due process of law.

Respondent further submits that the Complainant, Federal Trade Commission, after ex parte investigation,

has prejudged this case on questions of fact, which are of vital, if not controlling importance.

Respondent does not charge any bad faith, or intentional unfairness, on the part of the Commission, but submits that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that this respondent is thereby denied due process of law in this proceeding.

And now having fully answered, respondent prays that said complaint be dismissed.

Thomas H. Malone
Counsel for Respondent,
Suite 1012 Nashville Trust Bldg.,
Nashville, Tennessee.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D., 1929.

Commissioners:
Edgar A. McCulloch, Chairman,
Garland S. Ferguson, Jr.,
C. W. Hunt,
William E. Humphrey,
Charles H. March.

In the Matters of	
Royal Milling Co., et al.,	Docket No. 1597
Tennessee Grain Co.,	Docket No. 1598
Nashville Roller Mills,	Docket No. 1599
Snell Milling Co.,	Docket No. 1600
Watauga Milling Co., et al.,	Docket No. 1601
State Milling Co., et al.,	Docket No. 1602
Cherokee Mills Co., et al.	Docket No. 1604

ORDER.

The above-entitled matters coming on for consideration by the Commission on the suggested solutions of the issues raised in the complaints filed July 12, 1929, by Thomas H. Malone, counsel for respondents, and the Commission now being fully advised in the premises.

It Is Ordered that said suggested solutions be considered at the time of final argument on the merits.

By the Commission.

(Seal) Otis B. Johnson,
Secretary.

STIPULATION OF COUNSEL.

In the above styled cause it is stipulated and agreed between Baldwin B. Bane, Esq., counsel for Federal Trade Commission, and Thomas H Malone, counsel for respondents, and subject to the approval of the Federal Trade Commission:

I. That all evidence taken in the case of Francis J. McCarthy, doing business under the names of Watauga Milling Company, etc., (Docket No. 1601), may be considered as part of the evidence herein.

II. That the matters hereinafter covered by further stipulation in this cause may be considered in said cause of Francis J. McCarthy, doing business, etc. (Docket No. 1601), so far as they may be material to the general issues raised by the pleadings.

III. That in addition to the evidence in said cause (Docket No. 1601) the following additional facts are stipulated with reference to this cause:

1. That in 1905 the respondent D. V. Johnson procured a charter from the State of Tennessee under the corporate name "Tennessee Grain Company," and began business as a grain dealer; that this charter was surrendered in 1912, the said D. V. Johnson assuming all liabilities and taking over all assets; that said corporation was organized by the said D. V. Johnson for the handling of grain, and that the said respondent continued business as a grain dealer until about the year 1920.

2. That about the year 1920 machinery was installed by respondent for the grinding of feed and whole wheat flour.

3. That thereafter—about four years ago—other machinery was installed for the making of "self-rising" and "processed" flour—the said respondent being at the present time engaged exclusively in making "self-rising" and "processed" flour along the same general lines and by machinery of the same type as that employed, used and described in the testimony of respondent Francis J. McCarthy in Docket No. 1601.

4. That respondent is not now engaged in the grinding of whole-wheat flour or feed, but his plant is equipped for the manufacture of these commodities, but in a limited way as compared to his output of "self-rising" and "processed" flour.

5. That the words "and Tennessee Milling Company" were added to respondent's trade name because the original corporate and trade name had become con-

fused with similar trade names of other individuals thereafter entering business in this vicinity. That this addition was made at a time when respondent was operating grinding machinery for the manufacture of whole-wheat flour and feed, and before respondent installed the machinery for making "self-rising" and "processed" flour.

6. That when respondent first went into the business of selling "self-rising" and "processed" flour and until about two years ago he continued to use largely bags and stationery bearing only the name "Tennessee Grain Company." His brands were introduced and his connections in the "self-rising" and "processed" flour business were largely made while he was using, for the most part, such bags and stationery.

7. That since that time respondent has been using the name "Tennessee Grain Company and Tennessee Milling Company" in conducting his flour business, and the same appears on all stationery and bags.

8. That the brands put out by said respondent are as follows:

"Tennessee"—"Superlative Patent Plain."
"Commodore"—"Superlative Patent Plain."
"Diamond T"—"Superlative Patent Self-rising."
"Golden South"—"Superlative Patent Self-rising."
"White Gold"—"Fancy Patent Plain."
"Five Points"—"Fancy Patent Plain."
"Fancy Biscuit"—"Fancy Patent Self-rising."
"All the Talk"—"Fancy Patent Self-rising."
"Magnolia"—"Special Patent Plain."
"Goodeola"—"Special Patent Self-rising."

9. That said respondent in carrying on his business, buys and sells in Interstate Commerce.

10. That of the flour which goes through the processes already described, in respondents plant, and is afterwards sold to the trade, approximately 75% is "self-rising" and 25% "processed."

11. That said respondent, in 1929, did a business which in barrels amounted to 105,000, and in dollars and cents approximately $750,000.00.

12. That the value of respondent's plant is approximately $50,000.00 and his investment approximately $200,000.00.

13. That exhibits 1 to 4 inclusive show letter-heads, invoices, or trade circulars of the respondent.

Stipulation of Counsel

14. That exhibits 5 to 12 inclusive show the various bags, sacks, brands, etc., used by said respondent in carrying on his business.

15. That respondent sells his products through brokers and by mail to the retail trade, and does not solicit wholesalers.

16. That under date of February 20, 1929, a letter was addressed to Tennessee Grain Company and Tennessee Milling Company, signed by Web Woodfill, Chief Trial Examiner of Federal Trade Commission, enclosing a proposed stipulation. Said letter is marked exhibit 13 hereto, and said proposed stipulation exhibit 14. These exhibits are subject to the same objections, ruling of the Examiner, and exceptions made with reference to the offer of similar exhibits in Docket 1601, R., p. 1066, et seq., respondents' exhibits for identification 71 and 72.

17. That under date of July 12, 1929, a proposed solution of the controversy between respondent and the Federal Trade Commission was offered—the nature of said proposed solution, and the action of the Commission with respect thereto, being set out in the testimony of the witness Vernon S. Tupper, at pages 1070, et seq., of the record in Docket No. 1601.

IV. That the Federal Trade Commission wrote this respondent and also the respondents in Docket 1597 (Royal Milling Company), Docket 1599 (Nashville Roller Mills), Docket 1600 (Snell Milling Co.), Docket 1601 (Watauga Milling Co.), Docket 1602 (State Milling Co.), Docket 1604 (Cherokee Mills), Docket 1607 (Old Hickory Mills), Docket 1617 (Southern Milling Co.), and also Mero Mills, (which, it is stipulated, is the same Mero Mills mentioned in the testimony of the witness Thomas E. Snell in Docket 1601 at pages 934, et seq., of the record), a letter similar in form to respondents' exhibit 68, as shown in the testimony of the witness Vernon S. Tupper in Docket No. 1601, at page 1039, of the record, requesting from each a list of twenty-five customers; that nine of the above named concerns complied with said request; and that from the names so furnished the Federal Trade Commission obtained the twenty-five merchants or dealers, who were examined in chief on behalf of the Commission in said cause, Docket No. 1601, with the exception of the following two witnesses—Walter Cunningham and C. S. Ragland.

V. That to prevent the expense, delay and trouble incident to a separate trial of this cause, the same may

be heard and determined by the Commission in connection with said cause of Francis J. McCarthy, doing business, etc., Docket No. 1601,—it being agreed that the evidence introduced in said cause (Docket No. 1601) may be looked to by either party as if taken in this cause, and with respect to this respondent, except in so far as changed by this stipulation, and that the record therein shall constitute part of this record.

Thomas H. Malone,
For Respondents.
Baldwin B. Bane.

United States of America
BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D. 1931.

Commissioners:

C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the matter of D. V. Johnson, doing business under the name of Tennessee Grain Company and Tennessee Milling Company.	Docket 1598.

FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon the respondent above named charging him with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered his appearance and having filed his answer herein, a stipulation as to the facts was entered into between counsel for the respondent and counsel for the Commission in which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondent and argument by counsel for the Commission and counsel for the respondent, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

Paragraph One: Respondent, D. V. Johnson, an individual, conducts business under the trade name Tennessee Grain Company and Tennessee Milling Company. Respondent began business in 1905 as a grain dealer un-

der the name Tennessee Grain Company. He continued in business as a grain dealer under this name until about 1920. About the year 1920 machinery was installed by respondent for the grinding of feed and whole wheat flour. Respondent is not now engaged in the grinding of feed or whole wheat flour but his plant is equipped for such although in a limited way as compared with the flour which he mixes and sells as described below. Respondent is now and has been since about 1925 or 1926 engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. He then packs the flour in bags under brands of his trade name, and sells it to dealers located in various states of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to him at Nashville, Tennessee, at which point his place of business is located, and from which point he ships the flour to his customers. In the course and conduct of his business respondent is in competition with other individuals, corporations and partnerships engaged in the sale of flour in interstate commerce.

Paragraph Two: Respondent puts the flour which he buys from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda, and phosphate. If it is not to be self-rising a little phosphate is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry it to the reel or sifter, from whence it goes after being sifted into hopper bins, and thence to the packer where it is packed into bags of the desired size. There is no grinding process in the operation. Respondent sells ten brands of flour under this trade name, but each brand does not represent a different grade or quality of flour. It takes from ten to fifteen minutes to run the flour through the equipment used by respondent. The cost of the machinery in such a plant as the respondent's, having a capacity of

3,000 barrels a day on a 24-hour run, is approximately $20,000 to $25,000, and the total investment approximately $150,000 to $200,000. The value of respondent's plant is approximately $50,000 and his total investment approximately $200,000.

Paragraph Three: The grinding of wheat into flour has developed by various steps until today it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphate, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a succession of grindings between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using different numbers of breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A five break mill has eighteen spans of rolls and thirty-two separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middlings, offals, bran, shorts, etc. The bolting or sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of Flour." Bolting or sifting has been done by the concerns grinding the wheat into flour in this country from the earliest times.

Findings as to the Facts and Conclusion

The number of boltings or siftings differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the flour, thus improving its baking qualities, and whitens its. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moisture content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour can not be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades: patent flour, which means that part of the stream of flour which is left after taking off a greater or less percent of the inferior flour —it is the best flour made by the mill; straight flour, which means one hundred per cent flour, all the flour that is extracted from the wheat berry; clear flour is the flour taken off by the mill after the patent flour has been removed; low grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern grinding wheat into flour with a capacity of about 3,000 barrels a day is about $600,000, and the total investment between $1,000,000 and $1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from eight hours to fifty or sixty hours, due to difference in time required for tempering the wheat. But if the tempering time is excluded, the time required is from a half

hour to one and a half hours, depending upon the number of breaks and boltings used by the concern.

Paragraph Four: Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready for use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about seventy-five years ago. The self-rising flour business was originated or begun in Nashville, Tennessee, by a Dr. Owsley. He operated under the name Owsley Flour Company and sold through the Southeastern States. This company was succeeded by the Ford Flour Company about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating the mixing of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondents sell in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondents and who do not represent themselves as mills or milling companies, or manufacturers of flour.

Paragraph Five: Nashville, Tennessee, is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually grinding wheat into flour and selling in the Southeastern territory.

Paragraph Six: Respondents do not have or maintain a laboratory for testing or analyzing the flours which they buy or sell.

He uses regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it. By this test the characteristics or qualities of the flours, such as gluten content, protein content, mois-

true content, starch content, etc., cannot be determined. Only the relative appearance of the two flours can be gotten from such a test, and this is of little value in approximating even the grade of the flour, because practically all concerns grinding wheat into flour add phosphate and a bleaching agent to the flour on the mill stream. Different concerns add different amounts of such, and a greater amount of bleaching makes a lower grade of flour appear better. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. A difference in the granulation of the flour and in the amount of the total break of the wheat berry contained in the flour affects very materially the appearance of the flour. The quality and characteristics of the flour cannot be determined by the paddle test, and respondent by this test cannot maintain uniformity of brands or grades. The grade and quality of all flours are determined by their chemical analysis. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondent's plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

Paragraph Seven: Respondent represents himself as "Tennessee Grain Company And Tennessee Milling Company. Receivers And Shippers Of Grain. Manufacturers Of Soft Wheat Flour." In the letters, circulars and literature which respondent circulates among the trade in his efforts to sell flour he makes such statements as the following:

> "We have no salesmen in your territory and can make very close prices on flour orders sent in direct."

And:

> "Eventually you will see the best flour is Tennessee."

Findings as to the Facts and Conclusion

And:

"'Tennessee' plain flour and 'Diamond T' self-rising guaranteed to be as good as any flour regardless of brand or price."

Paragraph Eight: The containers for respondent's flour have on them the trade name under which he sells the flour as "From Tennessee Grain Company And Tennessee Milling Company." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour as follows: "Commodore. Superlative Patent Flour," "White Gold. Best Fancy Patent Flour." "Diamond T. Self-Rising Superlative Flour," "Golden South. Superlative Patent Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent's bags, labels, or containers, or in any of his literature as descriptive of any of his flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Paragraph Nine: When the term "mills" or "milling company," or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than from one that bought the flour from a grinding concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern a more uniform product or get a better product for less money because of the elimination of a middleman's profit or costs. Many persons, dealers and consumers, have been buying respondents' flour believing him to be, because of the use of such words or terms in the name under which he does business and because of his repre-

sentation that he is a "Manufacturer of Flour," a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as milling, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondent's use of such words or terms in the name under which he does business and his representation that he is a manufacturer of flour tend to and do divert trade to respondent from concerns actually grinding wheat into flour and selling in the States in the Southeastern section of the United States and from concerns engaged in the same character of business as respondent and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business or represent that they are manufacturers of flour.

CONCLUSION.

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

C. W. Hunt,
Chairman.

(Seal)
Dated this 16th day of
April, A. D. 1931.
Attest:
Otis B. Johnson,
Secretary.

United States of America
BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 16th day of April, A. D. 1931.

Commissioners:

C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of D. V. Johnson, doing business under the name of Tennessee Grain Company and Tennessee Milling Company.	Docket No. 1598.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission the answer of respondent thereto, stipulation as to the facts, briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondent has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes,"

It Is Now Ordered, that the respondent D. V. Johnson, doing business under the name of Tennessee Grain Company And Tennessee Milling Company, his representatives, agents and employees, do cease and desist from carrying on the business of selling flour in commerce among the several states of the United States under a trade name or any other name which includes the words "Milling Company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that he is a manufacturer of flour, or

that the flour sold by him comes direct from manufacturer to purchaser, unless and until respondent actually owns and operates or directly and absolutely controls a factory or a mill wherein is made by grinding or crushing the wheat berry any and all flour by him sold or offered for sale under such title or name, or by or through any advertisement or other representation that he is a manufacturer of flour.

It Is Further Ordered, that the respondent above named, within sixty (60) days from the date of the notice hereof, file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with and conformed to.

By the Commission:

Otis B. Johnson,
Secretary.

(Seal)

United States of America
BEFORE FEDERAL TRADE COMMISSION

In the Matter of Nashville Roller Mills, a Corporation, John Schultz, as President, Louis Baujan, as Vice President, and Virgil S. Tupper, as Secretary and Treasurer, and each individually.	Docket No. 1599.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Nashville Roller Mills; John Schultz, as President and individually; Louis Baujan, as Vice President and individually; and Virgil S. Tupper, as Secretary and Treasurer and individually, hereinafter referred to as respondents, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: Respondent, Nashville Roller Mills, is a corporation organized, and doing business, under the laws of the State of Tennessee, with its principal place of business in the City of Nashville, State of Tennessee. The respondents, John Schultz, Louis Baujan, and Virgil S. Tupper, are the President, Vice President, and Secretary and Treasurer, respectively of said corporation.

Paragraph Two: The Nashville Roller Mills is, and has been for three years last past, practicing the acts and things described in the following: It is engaged in purchasing wheat flour from flour millers throughout the middle west, which it causes to be transported to its plant in the City of Nashville, where it is blended and mixed with certain chemical leavening agents, such as baking powder, used to produce the commodity known to the public and in the trade as "self-rising flour." Respondent corporation solicits orders for the blends or mixtures so produced from dealers in States other than

Tennessee and contracts to sell and deliver, and does sell and cause its products to be transported to purchasers outside the State of Tennessee, principally to retail grocers in the southeastern states. It conducts its business, as aforesaid, under the trade names of "Cumberland Valley Milling Company," "Bell Meade Mills" and "The Red Mill." The respondent corporation is in competition with individuals, partnerships and corporations likewise engaged in the business of selling self-rising flour in interstate commerce.

Paragraph Three: Respondent corporation, in carrying on its business as aforesaid, solicits orders and sells its products principally through the mail service. It packs its product under a number of brands, each of the aforesaid trade names. On its letterheads, used in its business correspondence, appears the following:

"NASHVILLE ROLLER MILLS
The Red Mill
Quality Flour."

"CUMBERLAND VALLEY MILLING COMPANY
Flours of Quality
Plain and self-rising."

"THE RED MILL
Self-rising Extra Fancy Patented."

Respondent packs and delivers its product in cotton or other bags on which appear in conspicuous lettering, in connection with the pictures or symbols of this brand, the following:

"From
NASHVILLE ROLLER MILLS
Fancy Patent Flour."

"Supreme Patent Guaranteed
The best Manufactured."

"Manufactured for
from
BELL MEADE MILLS
Fancy Patent Flour."

"Fancy Patent Flour
From Select Winter Wheat."

Complaint

"CUMBERLAND VALLEY MILLING COMPANY
Supreme Patent Flour."

"Manufactured for
From
CUMBERLAND VALLEY MILLING COMPANY
Best Soft Winter Wheat Patent Flour."

"From
THE RED MILL, Makers."

Respondent corporation in its business correspondence makes other representations which have the capacity and tendency to lead dealers and prospective customers to believe that it operated a mill and grinds and manufactures the flour used and sold in its products.

Paragraph Four: The respondent corporations owns no mill or machinery other than devices for mixing flour purchased by it from various millers, with the ingredients indicated for self-rising flour as above described. It grinds no wheat or other cereal and owns and operates no machinery fitted for that purpose.

Paragraph Five: The use in its business by respondent, Nashville Roller Mills, of its corporate name and the trade names as aforesaid, as above described, and representations in its business correspondence as aforesaid, have the capacity and tend to lead dealers and prospective purchasers of self-rising flour to believe that in purchasing its products they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman or any element of cost of a middleman's profits, and to induce purchases of its flour by dealers and prospective purchasers on that understanding and belief; and said practices constitute unfair methods of competition with millers and manufacturers of flour likewise engaged in interstate commerce who grind the flour they offer for sale, alone or mixed as self-rising flour, and with producers and sellers of self-rising flour, likewise engaged in interstate commerce, who do not grind and manufacture but buy and sell flour made by others, in their product, and do not represent themselves to be millers or manufacturers of flour; to the injury of said millers and producers of self-rising flour, in that said practices of respondent tend to take away their business by false representations.

Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair

methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission on this 20th day of April, A. D., 1929, now here issues this its complaint against respondents.

NOTICE.

Notice is hereby given you, Nashville Roller Mills, John Schultz, Louis Baujan, and Virgil S. Tupper, respondents herein, that the 4th day of June, A. D., 1929, at 10:30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Commission, in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required within thirty (30) days from service of the complaint, unless such time be extended by order of the Commission to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answers and failure to answer (Rule III) provide as follows:

> (1) In case respondent shall desire to contest the proceeding such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.
>
> (2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a

statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 20th day of April, A. D., 1929.

By the Commission:

Otis B. Johnson,
Secretary.

(Seal)

THE JOINT AND SEPARATE ANSWER OF NASHVILLE ROLLER MILLS, A CORPORATION, JOHN SCHULTZ, INDIVIDUALLY AND AS PRESIDENT THEREOF, LOUIS BAUJAN, INDIVIDUALLY AND AS VICE PRESIDENT THEREOF AND VERNON S. TUPPER (ERRONEOUSLY STYLED IN THE COMPLAINT VIRGIL S. TUPPER), INDIVIDUALLY AND AS SECRETARY AND TREASURER OF SAID CORPORATION—Filed May 20, 1927.

Respondents for answer say:

Answering Paragraph One:

Respondents admit that the Nashville Roller Mills is a corporation chartered and existing under the laws of Tennessee, with its principal place of business at Nashville, Tennessee; that John Schultz is President, Louis Baujan is Vice President, and Vernon S. Tupper (erroneously styled Virgil S. Tupper) Secretary and Treasurer thereof.

Answering Paragraph Two:

1. Respondents admit that the Nashville Roller Mills is now and has been engaged (that is to say manufacturing) self-rising flour, but it is not true that this has been for only three years last past. On the contrary, said respondent has been manufacturing self-rising flour at its present location and with its present plant for more than fifteen years.

2. Respondents deny that said company is engaged merely in blending and mixing self-rising flour, and aver that it is engaged in a milling and manufacturing process, whereby certain materials, by the use of costly machinery, are turned into a finished product known as self-rising flour.

3. Respondents admit that said corporation solicits orders for self-rising flour so manufactured from dealers in states other than Tennessee, and contracts to deliver, an causes its products to be transported to purchasers in other states; but respondents deny that said corporation sells principally to retail grocers in the southeastern states.

4. Respondents admit that said corporation conducts its said business under the trade names "Cumberland Valley Milling Company," "Belle Meade Mills," and "The Red Mill."

5. Respondents admit that said corporation is in competition with others who are likewise engaged in the business of selling self-rising flour, but respondents are without knowledge as to whether said competitors are individuals, partnerships, or corporations, and are without knowledge as to what extent, if any, said competitors are engaged in interstate commerce, and in this connection further state that many, if not all of them, are engaged in the same practices which are denounced as "unfair" in the complaint, and if said practices are unlawful, are not competitors entitled to protection within the meaning of the Federal Trade Commission Act.

Answering Paragraph Three:

1. Respondents deny that said corporation solicits orders and sells its product principally through mail service.

2. Respondents admit that said corporation packs its products under a number of brands.

3. Respondents admit that in the letter heads used the words "Mills," "Milling," and "Manufactured" appear in various combinations, as alleged in the complaint, the further facts being that the respondent corporation, when organized and chartered in the year 1909, operated a wheat grinding plant which was burned in July, 1913, and then rebuilt and since operated as a mill for the manufacture of self-rising flour; and that the wording on said letter heads was such as respondents had a lawful right to use and was and is used without intent to deceive, and did not and does not in fact deceive either the public or its competitors.

4. Respondents admit that said corporation packs and delivers its product in cotton or other bags on which appear in conspicuous lettering in connection with pictures or symbols of this brand the words "Mills," or "Manufactured," as set forth in the complaint, respondents however insisting on the explanation given in subsection 3 of this paragraph, and that the use of said words was and is in good faith and did not and does not deceive either the public or the competitors of said company as above set forth; and further insisting that the processes used are manufacturing in the strictest sense of the word.

5. Respondents deny the conclusion (no facts being stated) that said corporation in its business correspondence makes other representations which have the capacity and tendency to lead dealers and prospective

customers to believe that it operates a mill and grinds and manufactures the flour used and sold in its products.

Answering Paragraph Four:

1. Respondents deny that said corporation owns no mill or machinery other than devices for mixing flour, etc., as alleged in the complaint—the fact being that said corporation owns elaborate and costly machinery, its plant being worth about $100,000.00,—with machinery is used in a manufacturing and milling process.

2. It is true that said corporation now grinds no wheat or other cereal and now owns and operates no machinery fitted for that purpose—that facts being that said corporation was chartered and organized as a wheat grinding mill; that said plant was burned about sixteen years ago; and that it was rebuilt as a mill for the manufacture of self-rising flour, as hereinbefore set out.

3. Respondents further state that the wheat miller—the individual who grinds wheat into flour—does not and cannot manufacture self-rising flour with his wheat grinding machinery, but is compelled to first get his flour, and then by a separate manufacturing process and with separate and different machinery (the same as that used by these respondents) turn his raw flour into self-rising flour.

Answering Paragraph Five:

1. Respondents deny that the use in its business by said corporation of the corporate and trade names aforesaid, and the alleged representations in its business correspondence (no facts stated) have the capacity and tend to lead dealers and prospective purchasers of self-rising flour to believe that in purchasing its products they are buying direct from a miller and manufacturer of flour, without the intervention of a middleman or any element of cost of a middle man's profit, and to induce purchases of its flour by dealers and prospective purchasers on that understanding and belief.

2. Respondents further deny that they, or any of them, are engaged in any unfair methods of competition with millers or other producers of self rising flour, alleged to be engaged in interstate commerce, and further deny that said practices constitute unfair methods of competition with such millers or makers of self-rising flour as alleged in the complaint.

2-a. Respondents aver that the wheat "miller" does not, and cannot, make self-rising flour by the use of his grinding machinery, but is compelled to first get his raw flour, either by grinding or purchase, and then by a separate milling process and by separate machinery (practically the same as that used by these respondents) turn it into self-rising flour. The "miller" who grinds his own flour has no advantage thereby, for he must absorb the local crop of wheat, which may or may not be good, whereas the so-called "blender" can buy the best flour wherever it is produced, and can buy such flour at actual cost. The explanation of this is that by selling their surplus at actual cost the wheat-grinding millers from whom he purchases are enabled to keep their mills going night and day, thus greatly reducing cost.

2-b. Respondents aver that there is no "middleman's profit" involved unless the self-rising flour which has been manufactured, as aforesaid, in the same way by both "miller" and "blender" is sold through a jobber; and where this is not done, and where the sale is made direct to the retailer, middleman's profits on self-rising flour are in fact eliminated.

2-c. Respondents further aver that the so-called "miller" has no advantage as to cost of manufacture, for it costs him as much to manufacture his raw flour as it does for respondent corporation to buy its raw flour, which it buys very cheaply for the reason hereinbefore stated. The production of self-rising flour is, as aforesaid, a separate milling process, as to which the so-called "miller" has no advantage, but is rather at a disadvantage.

3. Respondents deny that they, or any of them, by reason of the practices alleged in the complaint, have injured said "millers" and manufacturers of self-rising flour alleged to be engaged in interstate commerce, and particularly deny that said practices tend to take away business from them or any of them by false representations; and deny that respondents, or any of them, have been guilty of any false representations by the use of the words "Mill," "Milling," "Manufactured," or any kindred expression, as set forth in the complaint.

4. Respondents deny that said acts and practices are all to the prejudice of the public, and constitute unfair methods of competition within the meaning of said Act, and aver on the contrary that this proceeding, which is in fact (although not intentionally) in the interest of a

few private individuals, is to the injury of the public, and not within the spirit or letter of the Act.

Answering The Whole Complaint, respondents, in addition to the defenses hereinbefore set out, for further defense say:

1. Respondents deny that the complainant, the Federal Trade Commission, has jurisdiction of this proceeding.

2. Respondents deny that this proceeding falls within or is covered by the said Act of Congress creating the Federal Trade Commission.

3. Respondents deny that this is a proceeding in the interest of the public, and insist that the practices described in the complaint do not substantially tend to affect the public to its injury.

4. Respondents insist that this proceeding, so far from being in the interest of the consuming public, is in fact (although not intentionally) in the interest of a few private individuals, competitors of respondents; that the effect of sustaining this proceeding will be to injure the respondents and make their competition less effective, in that they will be charged by said competitors with fraudulent and willfully unfair practices; and that the effect of so reducing the competitive power of respondents will be to ultimately raise the price to the consuming public to its injury.

5. Respondents state that the use of the words "Mill," "Milling," "Manufacturer," etc., has been and is in good faith, and under claim of lawful right; that no fraud or deceit of any kind has been practiced on the public (none being charged in the complaint); that there has been no substitution by respondents of an inferior for a superior article, to the injury and deception of the consuming public; that the self-rising flour of the wheat miller is not manufactured by the use of his grinding mill, but, by the same process as that used by respondents, and the product is in no wise superior to respondents' product, but is more apt to be inferior.

6. Respondents are without knowledge of any producers of self-rising flour (so-called "blenders") who claim to have been injured in competing with respondents by the use of the words "Mills," "Milling," or "Manufactured," and deny that any such actors are its competitors, but allege on the contrary, that the competitors who are objecting to the use of said words by respondents are individuals, firms, or corporations owning wheat grinding mills, but also engaged in the manufac-

ture and sale of self-rising flour in competition with respondents.

With respect to such competitors, respondents insist that they are guilty of the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising flour by the manufacturing process already mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest of and for the protection of competitors who are themselves engaged in the same practices condemned by the complaint.

7. Respondents aver that said company's sales are made chiefly to wholesale grocers who are familiar with its methods, and that none of its customers are in fact deceived or misled into thinking that it operates a wheat-grinding mill, and they aver that it would be no advantage if they did think so, for better self-rising flour can be made by the so-called "blender." The "miller" is to a large extent dependent on the local crop, but respondents can buy wherever the crop is best.

8. Respondents deny that they, or any of them, have represented, or led their customers or the public to believe, that middleman's profits are excluded, etc., as alleged in the complaint. This charge is a mere unwarranted inference or conclusion without facts alleged to support it.

9. Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills, and manufacturing self-rising flour in competition with the respondent corporation, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by respondents and other Nashville manufacturers of self-rising flour, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing in October 1916, handed down an opinion which remains of record, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of respondents and other Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that they were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors.

Joint and Separate Answer of Respondents, etc.

10. Respondents for further defense submit that the complainant Federal Trade Commission, after ex parte investigation has prejudged this case on questions of fact which are of vital, if not controlling, importance, in that its authorized agent acting in its behalf has in writing stated that said Commission was of the opinion that respondents are not engaged in a manufacturing or milling process.

Respondents do not charge any bad faith or intentional unfairness on the part of the Commission, but they submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law in this proceeding.

And respondents further submit that if the Federal Trade Commission Act is to be construed as authorizing such procedure such portion of said Act contravenes the Fifth Amendment to the Constitution of the United States, in that the Federal Trade Commission is undertaking to act at the same time as litigant and judge—which is contrary to the fundamental maxim that no man shall be a judge in his own case—but its findings of fact, although contrary to the weight of the evidence, are conclusive if supported by any material evidence, and for this reason a full review of its action by an impartial tribunal is denied, and litigants are thereby deprived of their property without due process of law.

11. Respondents further aver that they have no wish and never have had any wish or intention to use unfair methods in competition, and have never used the words "Mill," or "Manufacture," or kindred words mentioned in the complaint with any intent to deceive or make false representations of any kind, being advised, on the contrary, that said words are truthful and fully authorized under the facts hereinbefore set out; and respondents submit that they should not be required to give up the trade names under which a valuable good will has been acquired; that this would inflict an unnecessary loss and hardship on respondents, and would in no wise benefit the public.

12. Respondents further state that they and other Nashville manufacturers of self-rising and processed flour supply a trade which is accustomed to buy in small quantities, and such service is an economic necessity in said territory, and in the interest of dealers and of the consuming public, and enables consumers to obtain these products at a lower price than would be possible if such service were withdrawn or discontinued.

Joint and Separate Answer of Respondents, etc.

Respondents further aver that all self-rising and processed flour is of the same general type, whether manufactured by the so-called "millers," or the so-called "blenders," and that competition between them can only be determined, and is in fact determined, by three factors, to-wit, price, quality, and service. The grinding of flour in a particular mill is not, and cannot be, a factor.

Wherefore, respondents having fully answered, pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville Trust Building,
Nashville, Tennessee.

AMENDED COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Nashville Roller Mills, a corporation; John Schultz, as President and individually; Louis Baujan, as Vice President and individually; and Virgil S. Tupper, as Secretary and Treasurer and individually, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: Respondents, Nashville Roller Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business in the City of Nashville, State of Tennessee. The respondents, John Schultz, Louis Baujan, and Virgil S. Tupper, are the

President, Vice President, and Secretary and Treasurer, respectively, of said corporation and control, manage and direct its business.

Paragraph Two: Respondent, Nashville Roller Mills, is engaged in the business of purchasing various lots and grades of wheat flour from mills located in the middle west which it causes to be transported to its plant in the City of Nashville and there blending and mixing the flour so purchased by it and putting up in sacks and offering for sale the mixtures and blends resulting therefrom, in some cases adding leavening agents such as baking powder to the blends or mixtures producing the commodity known to the public and dealers as "self-rising flour." In the course and conduct of its business as aforesaid said respondent solicits orders for its products in various states other than the State of Tennessee and contracts to sell and does sell and cause to be transported to purchasers outside of the State of Tennessee its products as above described. Said respondent conducts its business as aforesaid, under its name and under the trade names of "Cumberland Valley Milling Company," "Bell Meade Mills" and "The Red Mill." The respondent corporation in said business is in competition with individuals, partnerships and corporations likewise engaged in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour; or purchases the flour they offer for sale, whether as plain or self-rising, and do not in their trade names or otherwise in the conduct of their business use the words "mill," "mills," "miller," or "milling," or otherwise represent that they are engaged in the manufacture of flour as above described. Respondent in carrying on its business as aforesaid solicits orders and sells its products largely to retail grocers through the mail service.

Paragraph Three: Respondent corporation in the conduct of its business as aforesaid packs its product under a number of brands under each of the aforesaid names under which it operates. On its letterheads used in its business correspondence appears the following:

"NASHVILLE ROLLER MILLS
The Red Mill
Quality Flour."

Amended Complaint

"CUMBERLAND VALLEY MILLING COMPANY
Flours of Quality
Plain and self-rising."

"THE RED MILL
Self-rising Extra Fancy Patented."

Respondent packs and delivers its products in cotton or other bags on which appear in conspicuous lettering in connection with the pictures or symbols of the particular brands:

"From
NASHVILLE ROLLER MILLS
Fancy Patent Flour."

"Supreme Patent Guaranteed
The Best Manufactured."

"BELL MEADE MILLS,
Fancy Patent Flour."

"Fancy Patent Flour
From Select Winter Wheat."

"CUMBERLAND VALLEY MILLING COMPANY
Supreme Patent Flour"

"CUMBERLAND VALLEY MILLING COMPANY
Best Soft Winter Wheat Patent Flour."

"From
THE RED MILL, Makers."

Respondent corporation in its business correspondence and in soliciting orders makes other representations which have the capacity and tendency to lead dealers and consumers to believe that it operates a mill and grinds and manufactures the flour sold by it.

Paragraph Four: The respondent corporation owns no mill or machinery other than devices for blending or mixing the lots and grades of flours purchased by it from millers as above described and adding leavening agents. It manufactures no flour by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour and owns or operates no mill or machinery fitted for that purpose.

Amended Complaint

Paragraph Five: The use in its business by the respondent, Nashville Roller Mills, of its corporate name and the trade names as aforesaid and representations in its business correspondence and otherwise as aforesaid have the capacity and tendency to lead dealers and consumers of plain and self-rising flour to believe that in purchasing its products they are buying direct from a miller or manufacturer of flour as above described and without the intervention of a middleman or any element of a middleman's profit, and induce purchases of its flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce who make, as above described, the flour they offer for sale and with sellers of flour likewise engaged in interstate commerce who do not so manufacture but they buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondent are false and misleading and tend to take away their business.

Wherefore, said acts and practices of said respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission on this 4th day of September, A. D., 1929, now here issues this its amended complaint against respondents.

NOTICE.

Notice is hereby given you, Nashville Roller Mills, and John Schultz, Louis Baujan, and Virgil S. Tupper, respondents herein, that the 4th day of October, A. D., 1929 at 2 o'clock in the afternoon is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required on or before said date, to file with the Commission an answer to the complaint. If answer is filed appearance on that date will not be required and the hearing on the charges will be postponed to a later date, due notice of which will be given. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule III) provide as follows:

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint) file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegations of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to appear to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, The Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 4th day of September, A. D. 1929.

By the Commission:

Otis B. Johnson,
Secretary.

(Seal)

ANSWER TO AMENDED COMPLAINT—Filed Oct. 3, 1929.

The Joint and Separate Answer of Nashville Roller Mills, a corporation, John Schultz, as President thereof Louis Baujan, as Vice President, Vernon S. Tupper (erroneously sued as Virgil S. Tupper), as Secretary & Treasurer thereof, and of each individually, to the amended complaint in this cause filed against them.

Respondents for answer say:

1. It is admitted that respondent Nashville Roller Mills is a corporation under the laws of Tennessee, with its principal place of business at Nashville; that respondents John Schultz, Louis Baujan, and Vernon S. Tupper are President, Vice President, and Secretary & Treasurer, respectively, of said corporation, and control its business.

2. It is admitted that respondent Nashville Roller Mills is now, and has for many years been engaged in the manufacture of self-rising and processed flour in the City of Nashville, but it is denied that said business and the process of manufacturing said products are correctly described in the complaint.

It is admitted that said respondent contracts to sell, and sells and delivers its products outside the State of Tennessee.

3. It is admitted that respondent corporation is in competition with others in making and distributing said product, but respondents are without knowledge as to whether these competitors are individuals, partnerships, or corporations, or as to whether they are engaged in Interstate Commerce, or as to whether they manufacture the flour sold by grinding or crushing wheat, or as to whether they purchase the flour they offer for sale, and do not in their trade names or otherwise use the term "Mill", "Miller", or "Milling", or otherwise represent that they are engaged in the manufacture of flour, etc., as alleged in the complaint.

4. Respondent corporation solicits orders for its products, both through the mail service and through brokers, but it is denied that said respondent sells its products largely to retail grocers through the mail service, as alleged in the complaint.

5. Respondents deny that those of their competitors who are so-called "Millers" grind all the self-rising flour which they sell in competition with respondent corporation, and on the contrary aver that they, to a greater or

less extent, buy flour from others, which they make into self-rising flour by the same method used by respondent corporation, and put out this product in their own bags and under their own brands; and respondents aver that the same is true with respect to "processed" flour.

6. It is admitted that in the conduct of its business, as aforesaid, respondent corporation solicits orders and sells its products under the name of "Nashville Roller Mills," "Cumberland Valley Milling Company," "The Red Mill," and "Belle Meade Mills."

7. Respondents deny that the letter-heads, bags, and advertising matter, and the statements therein appearing, are correctly described in the complaint.

8. Respondents admit that the words "Mills", "Milling", and "Manufacturer" are used in connection with the letter-heads, advertising matter, and bags in the conduct of said corporation's business.

9. Respondents admit that there are no corporations or other organizations corresponding to the trade names "Cumberland Valley Milling Company," "The Red Mill," and "Belle Meade Mills," and allege that the respondent Nashville Roller Mills is doing business under these various trade names, which is a customary practice and well recognized business usage.

Respondents deny that in its business correspondence, and in soliciting orders, said corporation makes other representations which have the capacity and tendency to lead dealers and consumers to believe that it operates a mill and grinds and manufactures the flour sold by it, as alleged in the complaint.

10. Respondents deny that said corporation owns or operates no mill or machinery other than certain mixing devices, etc., and aver that it owns machinery adapted to the manufacture of self-rising and "processed" flour, which is both a milling and a manufacturing operation, the value of respondent corporation's plant being approximately $....., and of its machinery and equipment approximately $....., and of its investment capital, etc., approximately $.....; or a total investment of approximately $..... Respondent corporation's plant has a capacity of about ..... barrels a day on a twenty-four-hour basis. In 1928 said respondent corporation did a business of approximately $.....

It is true that said respondent corporation grinds no wheat or other cereals, and owns no wheat grinding machinery.

Answer to Amended Complaint

11. Respondents deny that the use of the aforesaid trade names, with the word "Mills," or "Milling," separately, or in combination with the term "Manufacturer," or any other statements on respondent corporation's letter-heads, bags, etc., has any tendency to make dealers or prospective customers or consumers believe that they are buying flour from a miller and manufacturer without a middle man's profit, etc., as claimed in the complaint.

Respondent Nashville Roller Mills shows that it acquired its corporate name many years ago, having been originally chartered and organized in 1909, as a wheat grinding mill; that said plant was destroyed by fire about sixteen years ago, to-wit, in July, 1913, and was then rebuilt, and has since been operated as a mill for the manufacture of self-rising and processed flour; that the use of the word "Mills" is pursuant to a corporate franchise, lawfully granted to respondent corporation some twenty years ago, by the State of Tennessee.

12. Respondents deny that any false representations are made by the use of the words aforesaid, and deny that these alleged practices, if proven, constitute any unfair competition with millers and makers of self-rising flour, or processed flour, alleged to be likewise engaged in Interstate Commerce, etc.

13. Respondents deny that said alleged actions have the effect of taking away business improperly from said alleged competitors, and on the contrary aver that said conduct, if proven, could have no such possible effect.

(a) Because the so-called "Millers" do not and cannot make self-rising flour with their grinding mills, but must first obtain raw flour, either by grinding it, or by purchasing the same, and then turn it into self-rising flour.

(b) Because said "Millers" obtain no advantage from making self-rising flour from the flour which they grind, but are rather at a disadvantage, both as to cost of production of the raw flour, and as to its quality, as will be shown at the hearing.

(c) Because self-rising and processed flour, no matter by whom made or sold, is essentially the same product destined for consumption in a particular region, and the buyers of such flour are governed by only three factors, to-wit: price, quality, and service.

(d) Because there is no pretense in the complaint that self-rising or processed flour made by the so-called

"blender," and there is no deception of the public by substituting an inferior for a superior article.

14. Respondents aver that those of said Nashville Roller Mills' competitors who are "millers" follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors who are themselves engaged, as against respondent corporation, in the same practices condemned by the complaint.

15. Respondents deny, as hereinbefore set out, that the use of the words "Mills," "Milling," or "Manufacturer," misleads, or has a tendency to mislead, any substantial portion of the purchasing or consuming public, in that they may be led to believe they are buying from one who grinds his wheat. But respondents are willing to cut off the possibility of deceiving, or misleading, any purchaser or customer through the use of the words above quoted, and to this end have heretofore offered, and hereby offer, to place on said corporation's letterheads, bags, invoices, etc., in conspicuous lettering the words:

"NOT GRINDERS OF WHEAT"

Respondents believe and state that said corporation is a "miller" and a "manufacturer"—in that it turns out a distinct product by the use of milling machinery—but it is not, and does not claim to be, a grinder of wheat, and is willing that this be distinctly and unequivocally stated.

16. Respondent corporation, under the trade names aforesaid, has acquired a valuable good will, and respondents insist that it would be unjust and inequitable to deprive said corporation of this.

Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville Manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full

hearing, in October, 1916, handed down an opinion, which remains of record, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors, thereby depriving respondent corporation of the valuable good will which it has built up.

17. Respondents deny that this proceeding is in the interest of the public, as claimed in the complaint, and allege on the contrary that said proceeding is actually (though not intentionally) in the interest of a few private individuals, competitors of the so-called "blenders," and that its tendency and effect, if sustained, will be to injure and exploit the consuming public for the benefit of private individuals. Respondents insist that the practices described in the complaint do not substantially tend to affect the public to its injury; deny that this proceeding falls within or is covered by the Act of Congress creating the Federal Trade Commission; and deny that the Complainant, Federal Trade Commission, has jurisdiction of this proceeding.

18. Respondents submit that Section 5 of the Federal Trade Commission Act, and the procedure thereunder, violate the Fifth Amendment to the Constitution of the United States, in that said Federal Trade Commission is not and cannot be impartial, since it acts both as plaintiff and judge in the same proceeding, and because its findings, however erroneous, and however opposed to the weight of evidence, are binding and conclusive on review if supported by any material evidence, and thus a full review by an impartial tribunal is denied, and the litigants before said Commission are thereby deprived of due process of law.

Respondents further submit that the Complainant, Federal Trade Commission, after ex parte investigation, has prejudged this case on questions of fact, which are of vital, if not controlling importance.

Respondents do not charge any bad faith, or intentional unfairness, on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United

States, and that these respondents are thereby denied due process of law in this proceeding.

And now having fully answered, respondents pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville
Trust Bldg.
Nashville, Tennessee.

United States of America
BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D., 1929.

Commissioners:
Edgar A. McCulloch, Chairman,
Garland S. Ferguson, Jr.,
C. W. Hunt,
William E. Humphrey,
Charles H. March.

In the Matters of	
Royal Milling Co., et al.,	Docket No. 1597
Tennessee Grain Co.,	Docket No. 1598
Nashville Roller Mills,	Docket No. 1599
Snell Milling Co.,	Docket No. 1600
Watauga Milling Co., et al.,	Docket No. 1601
State Milling Co., et al.,	Docket No. 1602
Cherokee Mills Co., et al.	Docket No. 1604

ORDER.

The above-entitled matters coming on for consideration by the Commission on the suggested solutions of the issues raised in the complaints filed July 12, 1929, by Thomas H. Malone, counsel for respondents, and the Commission now being fully advised in the premises,

It Is Ordered that said suggested solutions be considered at the time of final argument on the merits.

By the Commission.

(Seal)

Otis B. Johnson,
Secretary.

STIPULATION OF COUNSEL.

In the above styled matter it is stipulated and agreed between Baldwin B. Bane, Esq., counsel for Federal Trade Commission, and Thomas H. Malone, counsel for respondents, and subject to the approval of the Federal Trade Commission:

I. That all evidence taken in the cause of Francis J. McCarthy, doing business under the names of Wautaga Milling Company, etc., (Docket No. 1601), and especially the testimony of the witness Vernon S. Tupper, appearing at pages 1037, et seq., of the record in said cause, Docket No. 1601, may be considered as part of the evidence herein.

II. That the matters hereinafter covered by further stipulation in this cause may be considered in said cause of Francis J. McCarthy, doing business, etc. (Docket No. 1601), and also in Docket No. 1597, Docket No. 1598, Docket No. 1600, Docket No. 1601, Docket No. 1602, and Docket No. 1604, in so far as applicable to the general issues raised under the pleadings therein.

III. That in addition to the evidence in said cause (Docket No. 1601), the following additional facts are stipulated, with reference to this cause:

1. That respondent Nashville Roller Mills is a corporation, chartered under the law of Tennessee in the year 1908, with respondent John Schultz as its President, Louis Baujan as its Vice-President, and Vernon S. Tupper as its Secretary & Treasurer, and that from 1908 until July, 1913, said corporation operated a wheat-grinding plant, which was burned in July, 1913, and then rebuilt as a plant for the making of "self-rising" and "processed" flour, and has since been operated as such, in the manner and under the conditions shown in the testimony of the witness Vernon S. Tupper in Docket No. 1601.

2. That said corporation operates under the following trade names: "Cumberland Valley Milling Company", and "Belle Meade Mills", and that the Nashville Roller Mills is also called "The Red Mill", but this is merely a descriptive term or "nick-name."

3. That the following brands are put out by said Nashville Roller Mills:

"Rising Sun"—"Patent Self-rising."
"Red Feather"—"Patent Self-rising."
"Gloria"—"Short Patent Plain."

Stipulation of Counsel

"White Wings"—"Patent Plain."
"Conqueror"—"Patent Plain."
"Mytyfyne"—"Extra Fancy or Cut off Self-rising."

4. That the following brands are put out by said corporation under the trade name "Cumberland Valley Milling Company":

"Lady Clair"—"Patent Self-rising."
"Star Dust"—"Patent Self-rising."
"Ace of Aces"—"Short Patent Plain."
"Spinning Wheel"—"Patent Plain."
"Hi-Lo"—"Extra Fancy or Cut Self-rising."

5. That the following brands are put out by said corporation under the trade name "Belle Meade Mills":

"Nightengale"—"Patent Self-rising."
"Brides"—"Patent Self-rising."
"Thistledown"—"Short Patent Plain."
"Ruby Red"—"Patent Plain."
"Red Ribbon"—"Patent Plain."
"Lullaby"—"Extra Fancy or Cut Off Self-rising."

6. That exhibits 1 to 7, inclusive, to this stipulation, are letters or advertisements of said corporation—said advertisements having appeared in the Nashville Tennessean (a daily newspaper) July 11, 1926, and said letters having been written to customers, or prospective customers, at the date in each case shown herein.

7. That exhibits 8 to 25, inclusive, hereto, show the various sacks, bags, and brands used by respondent corporation in the operation of its business.

8. That exhibit 26 hereto is a photograph, showing an exterior view of the plant of said corporation. Exhibit 27 is a photograph, showing an interior view of a portion of the first floor—packers, bins, etc., as thereon indicated. Exhibit 28 is a photograph of another portion of the first floor of the plant, showing "self-rising" mixers and elevators, as thereon indicated. Exhibit No. 29 is a photograph, showing a view of the second floor of said plant, with various spouts, bins, etc., as thereon indicated. Exhibit No. 30 (a plat made by Coats & Burchard Co., of Chicago) shows the floor plan, elevators, etc., of said plant.

9. That of the flour which goes through the processes already described, in its plant, and is afterwards sold to

the trade, approximately 57% is "self-rising" and approximately 43% is "processed."

10. That said corporation markets its products chiefly to jobbers, or wholesalers, by solicitation of salesmen and through the mail, employing one salesman in the City of Nashville and seven outside of Nashville.

11. That the present reproduction value of the plant and equipment of said corporation is approximately $155,000.00, and that the whole investment is approximately $310,000.00.

12. That the number of barrels sold in the year 1929 was 315,596, and the amount of business in dollars and cents was $2,170,036.01.

13. That the price of wheat, as fixed by the St. Louis wheat market, is a factor which enters into the price of flour in the Southeastern territory, and is so regarded by operators of wheat grinding mills as well as by operators of the plants for the making of "self-rising" or "processed" flour in Nashville, and by wholesale and retail merchants in said Southeastern territory.

14. That said corporation, in carrying on its business, buys and sells in Interstate Commerce.

15. That in response to the request made in the cross-examination of the witness Vernon S. Tupper, to procure information with regard to the advantage over mills North of the Ohio River and West of the Mississippi River by reason of milling in transit privilege, etc. (Record in Docket No. 1601, pp. 1105, et seq.), said witness wrote letters to Sparks Milling Co., Terre Haute, Ind., Canadian Mill & Elevator Co., El Reno, Okla., Loudonville Milling Co., Loudonville, Ohio, Wichita Flour Mills Co., Wichita, Kans., Schultz Baujan & Co., Beardstown, Ill., and Maney Milling Co., Omaha, Neb., requesting information as to carload, and less than carload, rates, to Atlanta, Ga., Montgomery, Ala., and Spartanburg, S. C. The replies submitted by the above named mills are tabulated as follows:

To	From Beardstown		Wichita		Loudonville		Omaha		El Reno		Terre Haute	
	CL	LCL	CL	LCL	CL	LCL	CL	LCL	CL	LCL	CL	LCL
Atlanta	50c	62c	65½	1.34½	51	61c	52	52	61	1.34½	50	55½c
Montgomery	42½	59½	58c	1.32	46½	61c	44½	49½	53½	1.32	42½	53
Spartanburg	58c	74c	73½	1.47	53	67½	60	64½	70½	1.48½	58	70

IV. That the Federal Trade Commission wrote this respondent corporation, and also the respondents in

Docket 1597 (Royal Milling Company) Docket 1598 (Tennessee Grain Co. and Tennessee Milling Co.), Docket 1600 (Snell Milling Co.), Docket 1601 (Watauga Milling Co.), Docket 1602 (State Milling Co.), Docket 1604 (Cherokee Mills), Docket 1607 (Old Hickery Mills), Docket 1617 (Southern Milling Co.), and also Mero Mills, (which, it is stipulated, is the same Mero Mills mentioned in the testimony of the witness Thomas E. Snell in Docket 1601, at pages 934, et seq., of the record), a letter similar in form to respondents' exhibit 68, as shown in the testimony of the witness Vernon S. Tupper in Docket No. 1601, at page 1039 of the record, requesting from each a list of twenty-five customers; that nine of the above named concerns complied with said request; and that from the names so furnished the Federal Trade Commission obtained the twenty-five merchants or dealers, who were examined in chief on behalf of the Commission in said cause, Docket No. 1601, with the exception of the following two witnesses—Walter Cunningham and C. S. Ragland.

V. That to prevent the expense, delay and trouble incident to a separate trial of this cause, the same may be heard and determined by the Commission in connection with said cause of Francis J. McCarthy, doing business, etc., Docket No. 1601,—it being agreed that the evidence introduced in said cause (Docket No. 1601) may be looked to by either part as if taken in this cause, and with respect to this respondent corporation, except in so far as changed by this stipulation, and that the record therein shall constitute part of this record.

Thomas H. Malone,
for Respondent.
Baldwin B. Bane.

United States of America

BEFORE THE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D. 1931.

Commissioners:

C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of Nashville Roller Mills, a corporation, John Schultz, as President, Louis Baujan, as Vice-President, Vernon S. Tupper, as Secretary and Treasurer and each individually.	Docket 1599.

FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon respondents above named charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearances and having filed their answer herein, a stipulation as to the facts was entered into between counsel for the respondent and counsel for the Commission in which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondents and argument by counsel for the Commission and counsel for the respondents, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

Paragraph One: Respondent, Nashville Roller Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee.

Findings as to the Facts and Conclusion

The respondents, John Schultz, Louis Baujan and Vernon S. Tupper, are the President, Vice-President and Secretary and Treasurer respectively of said respondent corporation and conduct, manage, control and direct its business. Respondents' place of business is located in Nashville, Tenn. Respondent, Nashville Roller Mills, conducts business under its own name and under the trade names of Cumberland Valley Milling Company, Belle Meade Mills, and The Red Mill, the last of which names is largely used in connection with the name Nashville Roller Mills as a descriptive term. Respondent, Nashville Roller Mills, is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. It then packs the flour in bags under brands of its own or its trade names and sells it to dealers located in various states of the United States, but particularly in the Southeastern States. Respondent buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to it at Nashville, Tennessee, from which point it ships the flour to its customers. In the course and conduct of its business respondent is in competition with other corporations, partnerships and individuals engaged in the sale of flour in interstate commerce. From 1908 until July 1913 respondent corporation operated a plant grinding wheat into flour. This plant was burned in July 1913. Respondent corporation did not rebuild a plant to grind wheat into flour after this fire but built and has since operated a plant for conducting a business as described above.

Paragraph Two: Respondent corporation puts the flour which it buys from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda, and phosphate. If it is not to be self-rising a little phosphate is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry it to the reel or sifter, from whence it goes after being sifted into hopper bins, and thence to

the packer where it is packed into bags of the desired sizes. There is no grinding process in the operation. Respondent corporation sells from five to six brands under each trade name, but each brand does not represent a different grade or quality of flour. It takes from 10 to 15 minutes to run the flour through the equipment used by respondent corporation. The cost of the machinery in such a plant as the respondent corporations, having a capacity of 3,000 barrels a day on a 24-hour run, is approximately $20,000 to $25,000, and the total investment approximately $150,000 to $200,000. The present replacement value of the plant and equipment of respondent corporation is approximately $155,000.

Paragraph Three: The grinding of wheat into flour has developed by various steps until today it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphate, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a succession of grindings between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using different numbers or breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A five break mill has eighteen spans of rolls and thirty-two separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middling, offals, bran, shorts, etc. The bolting or sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The

wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of Flour." Bolting or shifting has been done by the concerns grinding the wheat into flour in this country from the earliest times. This number of boltings or siftings differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the flour, thus improving its baking qualities, and whitens it. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moisture content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour cannot be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades: patent flour, which means that part of the stream of flour which is left after taking off a greater or less percent of the inferior flour—it is the best flour made by the mill; straight flour, which means one hundred percent flour, all the flour that is extracted from the wheatberry; clear flour is the flour taken off by the mill after the patent flour has been removed; low grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern

grinding wheat into flour with a capacity of about 3,000 barrels a day is about $600,000, and the total investment between 1,000,000 and $1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from eight hours to fifty or sixty hours, due to differences in time required for tempering the wheat. But if the tempering time is excluded, the time required is from a half hour to one and a half hours, depending upon the number of breaks and boltings used by the concern.

Paragraph Four: Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready to use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about seventy-five years ago. The self-rising flour business was originated or begun in Nashville, Tennessee, by a Dr. Owsley. He operated under the name Owsley Flour Company and sold through the Southeastern States. This company was succeeded by the Ford Flour Company about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondent corporation sells in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondent corporation and who do not represent themselves as mills or milling companies, or manufacturers of flour.

Paragraph Five: Nashville, Tennessee, is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually

grinding wheat into flour and selling in the Southeastern territory.

Paragraph Six: Different concerns grinding wheat into flour and different amounts of phosphate and bleaching agent to the flour on the mill stream. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondent corporation's plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not called or known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

Paragraph Seven: Respondent corporation represents itself as "Nashville Roller Mills. The Red Mill. Quality Flour;" "Cumberland Valley Milling Company. Flours of Quality. Plain and Self-Rising;" "Belle Meade Mills. Quality Flour;" "The Red Mill. Flours of Quality." In the letters, circulars and literature which respondent corporation circulates among the trade in its effort to sell flour it makes such statements as the following:

> "The May option in wheat has been very interesting—that is to those equipped with steady nerves and able to withstand shock. The last days of the week has seen a bewildering series of flights and nose dives, very spectacular but not noticeably soothing.
>
> "But May wheat, thank heaven, has gone into this discard. True, the old crop has a few weeks of life left, but the new crop will now have the spotlight. * * *
>
> "Be they never so abstemious, the people are going to consume a whole lot of flour before new crop wheat is to be had; and you and I would be remiss should we fail to continue to function with diligence and effectiveness. May we have your active backing to the end that this coming month of June may be prolific, not only for brides but particularly in volume of business on Red Mill flours."

Findings as to the Facts and Conclusion

And:

"Pending the time when new wheat is actually on the market, the trade would do well to bear in mind that old wheat stocks—and it is from old wheat exclusively whence our supplies of flour for the ensuing several weeks must come—are low, unusually low. Under the circumstances, it is scarcely likely that any severe break will develop for quite a bit of a while."

Paragraph Eight: The containers for respondent corporation's flour have on them the name under which it is selling the particular flour such as "From Nashville Roller Mills," "From Cumberland Valley Milling Company," "From the Red Mill, Makers," "Manufactured For From Belle Meade Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Rising Sun. Superlative Self-Rising Flour," "Gloria. Supreme Patent. The Best Manufactured," "Bride's. Superlative Self-Rising Flour," "Spinning Wheel. Best Soft Winter Wheat Patent Flour," "Ace of Aces. Supreme Patent Flour," "Conqueror. Fancy Patent Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent corporation's bags, labels or containers, or in any of its literature as descriptive of any of its flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Paragraph Nine: When the term "mills" or "milling company," or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than from one that bought the flour from a grind-

ing concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern a more uniform product or get a better product for less money because of the elimination of a middleman's profit or costs. Many persons, dealers and consumers, have been buying respondent corporation's flour believing it to be, because of the use of such words or terms in the names under which it does business and because of its representation that it is a manufacturer of flour, a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as milling, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondent corporations use of such words or terms in the names under which it does business and its representation that it is a manufacturer of flour tend to and do divert trade to respondent corporation from concerns actually grinding wheat into flour and selling in the states in the Southeastern section of the United States, and from concerns engaged in the same character of business as respondent corporation and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business or represent that they are manufacturers of flour.

CONCLUSION.

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

(Seal)

C. W. Hunt,
Chairman.

Dated this 16th day of April, A. D., 1931.

Attest:

Otis B. Johnson,
Secretary.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D. 1931.

Commissioners:
C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of Nashville Roller Mills, a corporation, John Schultz, as President, Louis Baujan, as Vice-President, Vernon S. Tupper, as Secretary and Treasurer and each individually.	Docket No. 1599.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and it conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It Is Now Ordered that the respondents, Nashville Roller Mills, a corporation, John Schultz, President, Louis Baujan, Vice-President, Vernon S. Tupper, Secretary and Treasurer and each individually, their representatives, agents and employees and the representatives, agents and employees of each of them, do cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name, corporate name or any other name which includes the word "Mills" or the words "Milling

Company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such word or words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such title or name, or by or through any such representations.

It Is Further Ordered, that the respondents above named within sixty (60) days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which the order has been complied with and conformed to.

Otis B. Johnson,
Secretary.

(Seal)

United States of America

BEFORE FEDERAL TRADE COMMISSION

In the Matter of Snell Milling Company, a corporation, Thomas E. Snell, as President and individually, J. A. Stevens, as Vice President and individually, and Percey Myatt, as Secretary and individually.	Docket No. 1600.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes, the Federal Trade Commission charges that the Snell Milling Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: Respondent, Snell Milling Company, is a corporation organized in 1925, and doing business, under the laws of the State of Tennessee. Its office and principal place of business are located in Nashville, Tennessee. The respondents, Thomas E. Snell, J. A. Stevens and Percy Myatt, are the President, Vice President and Secretary, respectively, of said corporation.

Paragraph Two: The Snell Milling Company is, and has been for two years last past, practicing the acts and things described in the following: It is engaged in purchasing wheat flour from flour millers throughout the middle west, which it causes to be transported to its plant in Nashville, where it is blended and mixed with certain chemical leavening agents, such as baking powder, used to produce the commodity known to the public and in the trade as "self-rising flour." Respondent solicits orders for the blends or mixtures so produced, from dealers in States other than Tennessee and contracts to sell and deliver, and does sell and cause them to be transported to purchasers outside the State of Tennessee. The

respondent Snell Milling Company is in competition with individuals, partnerships and corporations likewise engaged in the business of selling self-rising flour in interstate commerce.

Paragraph Three: Respondent Snell Milling Company, in carrying on its business as aforesaid, solicits orders and sells its product principally through the mail service. It is its practice to mail to lists of prospective customers at intervals letters containing quotations of prices and solicitations of orders. The letter head used by respondent in carrying on its business as the Snell Milling Company bears the following caption:

"SNELL MILLING COMPANY.
Manufacturers of
High Grade Flour
Every Sack Guaranteed"

Respondent in its business correspondence makes other representations which have the capacity and tend to lead dealers and prospective customers to believe that it operated a mill and grinds and manufactures the flour used and sold in it products.

Paragraph Four: Respondent Snell Milling Company also solicits orders for and sells its products under the trade name of "Peabody Mill Company," using principally the mail service. The letterhead used by respondent in carrying on its business under the name of Peabody Mill Company bears the caption:

"PEABODY MILL COMPANY
Manufacturers of Quality Flour."

In conducting its business under the name of "Peabody Mill Company," respondent in its business correspondence makes other representations which have the capacity and tend to lead dealers and prospective customers to believe that it operates a mill and grinds and manufactures the flour used and sold in its products under that name; whereas, in fact, "Peabody Mill Company" is a fiction and merely a trade name.

Paragraph Five: In the course of its business as aforesaid, respondent Snell Milling Company delivers the various blends of self-rising flours produced by it to purchasers in sacks on which are displayed the names and designs, or brands, adopted by it for the different blends, and the words "Snell Milling Company" or "Peabody Mill Company."

Complaint

Paragraph Six: Respondent Snell Milling Company owns no mill or machinery other than certain devices for mixing flour, purchased by it from various millers, with the ingredients indicated for self-rising flour as above described. It grinds no wheat or other cereal and owns and operates no machinery fitter for that purpose.

Paragraph Seven: The use by respondent Snell Milling Company of its corporate name and the trade name "Peabody Mill Company" in its business, and representations in its business correspondence as aforesaid, have the capacity and tend to lead dealers and prospective purchasers of self-rising flour to believe that in purchasing its products they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman or any element of cost of a middleman's profits, and to induce purchases of its flour by dealers and prospective purchasers on that understanding and belief; and said practices constitute unfair methods of competition with millers and manufacturers of flour likewise engaged in interstate commerce who grind the flour they offer for sale, alone or mixed as self-rising flour, and with producers and sellers of self-rising flour, likewise engaged in interstate commerce, who do not grind and manufacture, but buy and sell flour made by others, in their product, and do not represent themselves to be millers or manufacturers of flour; to the injury of said millers and producers of self-rising flour, in that said practices of respondent tend to take away their business by false representations.

Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce with the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission on this 20th day of April, A. D., 1929, now here issues that its complaint against respondents.

NOTICE.

Notice is hereby given you, Snell Milling Company, Thomas E. Snell, J. A. Stevens and Percey Myatt, respondents herein, that the 4th day of June, A. D., 1929, at 10:30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Company, in the City of Washington, D. C., as the place, when and

where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required within thirty (30) days from service of the complaint, unless such time be extended by order of the Commission, to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answers and failure to answer (Rule III) provide as follows:

(1) In case respondent shall desire to contest the proceeding such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceedings, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Complaint

In Witness Whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 20th day of April, A. D., 1929.

By the Commission:

Otis B. Johnson,
Secretary.

(Seal)

THE JOINT AND SEPARATE ANSWER OF SNELL MILLING COMPANY, A CORPORATION, THOMAS E. SNELL, AS PRESIDENT THEREOF AND INDIVIDUALLY, J. A. STEVENS, AS VICE-PRESIDENT AND INDIVIDUALLY, AND PERCEY MYATT, ERRONEOUSLY SUED AS SECRETARY AND INDIVIDUALLY, TO THE COMPLAINT IN THIS CAUSE FILED AGAINST THEM—Filed May 20, 1929.

Respondents for answer say:

Answering Paragraph One:

Respondents admit that respondent Snell Milling Company is a corporation, organized in 1925, and doing business under the laws of Tennessee, with its office and principal place of business in Nashville, Tennessee; that the respondents Thomas E. Snell and J. A. Stevens are respectively President and Vice President thereof; but respondents deny that the said Percey Myatt is Secretary and Treasurer of said corporation, and aver on the contrary that he has no connection, official or otherwise, with said corporation, and is now engaged in another business, and that he was erroneously joined as a party to this proceeding.

Answering Paragraph Two:

1. It is admitted that the respondent Snell Milling Company is engaged in the production of self-rising flour in the City of Nashville, Tennessee, but it is denied that the duration and nature of said business are correctly stated in the complaint, the facts being that said corporation has been engaged in said business since its organization in 1925, and that the making of self-rising flour is not a mere mixing operation, but is on the contrary both a milling and a manufacturing operation, whereby, through the use of milling machinery, raw flour and other ingredients are manufactured into a separate and distinct product.

2. It is admitted that respondent corporation solicits orders, for the product so manufactured, from dealers in States other than Tennessee, and sells and causes the same to be transported to purchasers outside the State of Tennessee.

3. It is admitted that respondent corporation has competition from others in the sale of self-rising flour, but respondents are without knowledge as to whether these competitors are individuals, partnerships, or corporations, or as to what extent, if any, they are engaged in interstate commerce.

4. Respondents deny that those of said competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with respondents, and on the contrary aver that said "millers", to a greater or less extent, buy flour which they make into self-rising flour by the same process used by respondents, and put out this product in their own bags and under their own brands, and respondents insist that "unfair competition" cannot be claimed for their protection, as hereinafter shown.

Answering Paragraph Three:

1. It is denied that respondent Snell Milling Company solicits orders and sells its product principally through the mail service.

2. It is admitted that said respondent, from time to time, mails letters to prospective customers containing quotations of prices and solicitation of orders.

3. Respondents admit that the letter head used by said corporation bears the caption stated in the complaint, and respondents insist that said corporation is both engaged in milling and manufacturing, and that

said letter head properly and truthfully describes its business.

4. Respondents deny the conclusion (no facts being stated in the complaint) that said corporation, in its business correspondence, makes other representations which have the capacity and tend to lead dealers and prospective customers to believe that it operates a mill and grinds and manufactures the flour used and sold in its products.

Answering Paragraph Four:

1. It is admitted that respondent Snell Milling Company also solicits orders and sells its product under the trade name "Peabody Mill Company," but it is denied that this is done principally by mail service. It is admitted that respondent, in carrying on its business under the trade name "Peabody Mill Company," uses the letter head containing the words "Mills" and "Manufacturers" mentioned in the complaint, and respondents insist that the use of these words is justified by the nature of the business.

2. It is admitted that the name "Peabody Mill Company" is a trade name, but it is denied that the use of said name has the capacity and tends to lead dealers and prospective customers to believe that it operates a mill which grinds and manufactures the flour used; and the conclusion (no facts being stated in the complaint) is likewise denied that respondent, in its business correspondence makes other representations which have the like tendency and effect.

3. In this connection respondents aver that the respondent Snell Milling Company also does business under the trade name "Mero Mills," having acquired the bags, stock of flour, good will, brands, and trade names of said "Mero Mills" on the ——— day of July, 1928. Respondents state, on information and belief, that on the ——— day of March, 1929, after said "Mero Mills" had ceased to do any business for mony months, and was in process of liquidation, the Treasurer, or former Treasurer of said company, without respondents' knowledge or consent, undertook to enter into a stipulation with the complainant Federal Trade Commission to cease and desist from the use of the word "Mills," etc.

Respondents have since been furnished with a copy of a letter, purporting to have been written to complainant Federal Trade Commission, under date of March 12, 1929, referring to File No. 1-4664, in which it is stated

that said company was liquidated in July, 1928, with the exception of real estate and accounts receivable; that the bags, stock of flour, good will, brands, and trade names were sold to respondent corporation; that the charter would be surrendered in the near future; that the "Mero Mills" had not sold or purchased flour since the date above stated, and that the only business being transacted by the corporation was the collection of accounts receivable, and looking after real estate.

Respondents are advised and submit that the signing of such stipulation (if valid for any purpose, in view of the facts hereinbefore set out), could not bind or affect the rights of these respondents.

Answering Paragraph Five:

It is true that in the course of its business respondent Snell Milling Company delivers the various blends of self-rising flour produced by it to purchasers in sacks, showing the names and designs for the different blends, and the words "Snell Milling Company" or "Peabody Mill Company," which respondents aver was done without intent to deceive, and without any tendency to deceive or in any way mislead the customers of respondent corporation.

Answering Paragraph Six:

Respondents deny that said corporation owns no machinery other than mixing devices, and aver on the contrary that it owns machinery adapted to the manufacture of self-rising flour by a milling process; that its capital stock is $50,000.00, and that its machinery and equipment is worth $10,000.00 to $12,000.00.

Answering Paragraph Seven:

1. Respondents deny that the use of the corporate name "Snell Milling Company" and of the trade names "Peabody Mill Company" and "Mero Mills," and the alleged representations in their business correspondence (no facts being stated in the complaint), have the capacity and tend to lead dealers and prospective purchasers of their products to believe that in so purchasing they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman, or any element of cost of a middleman's profits, and to induce purchases of their flour by dealers and prospective purchasers on that understanding and belief, as alleged in the complaint.

2. Respondents aver that the wheat "miller" does

not, and cannot, make self-rising flour by the use of his grinding machinery, but is compelled to first get his raw flour, either by grinding or purchase, and then by a separate milling process, and by separate machinery, (practically the same as that used by these respondents) turn it into self-rising flour. The "miller" who grinds his own flour has no advantage thereby, for he must absorb the local crop of wheat which may or may not be good, whereas, the so-called "blender" can buy the best flour wherever it is produced, and can buy such flour at actual cost. The explanation of this is that by selling their surplus at actual cost the wheat-grinding millers from whom he purchases are enabled to keep their mills going night and day, thus greatly reducing cost.

3. Respondents aver that there is no "middleman's profit" involved unless the self-rising flour which has been manufactured, as aforesaid, in the same way by both "miller" and "blender" is sold through a jobber; and where this is not done, and where the sale is made direct to the retailer, middleman's profits on self-rising flour are in fact eliminated.

4. Respondents further aver that the so-called "miller" has no advantage as to cost of manufacture, for it costs him as much, or practically as much, to manufacture his raw flour as it does for respondents to buy their raw flour, which they obtain very cheaply, for the reason hereinbefore stated. The production of self-rising flour is, as aforesaid, a separate milling process, as to which the so-called "miller" has no advantage, but is rather at a disadvantage.

5. Respondents further deny that said practices constitute unfair methods of competition with millers and manufacturers of flour alleged to be engaged in interstate commerce, who grind the flour they offer for sale alone, or mixed as self-rising flour, and with producers of self-rising flour alleged to be engaged in interstate commerce who do not represent themselves to be millers or manufacturers of flour, as alleged in the complaint.

Respondents further deny that they are in competition with any sellers of raw or plain flour, and deny that they claim to be manufacturers of plain flour, and deny that their customers or prospective customers believe them to be engaged in the manufacture and sale of plain flour.

6. Respondents deny that they have made any false representations to the injury of said "millers" and producers of self-rising flour, and that they have taken away their business by false representations, as alleged in the complaint.

7. Respondents deny that said acts and practices, alleged to have been committed by respondents, are all to the prejudice of the public, and constitute unfair methods of competition within the meaning of the Federal Trade Commission Act, and aver on the contrary that this proceeding, which is in fact (although not intentionally) in the interest of a few private individuals, is to the injury of the public and not within the spirit or letter of the Act.

Answering The Whole Complaint, respondents, in addition to the defenses hereinbefore set out, for further defense say:

1. Respondents deny that the complainant, the Federal Trade Commission, has jurisdiction of this proceeding.

2. Respondents deny that this proceeding falls within, or is covered by the said Act of Congress creating the Federal Trade Commission.

3. Respondents deny that this is a proceeding in the interest of the public, and insist that the practices described in the complaint do not substantially tend to affect the public to its injury.

4. Respondents insist that this proceeding, so far from being in the interest of the consuming public, is in fact (although not intentionally) in the interest of a few private individuals, competitors of respondents; that the effect of sustaining this proceeding will be to injure respondents and make their competition less effective, in that they will be charged by said competitors with fraudulent and willfully unfair practices; and that the effect of so reducing the competitive power of respondents will be to ultimately raise the price to the consuming public to its injury.

5. Respondents further state that the use by them of the word "Milling" and of the word "Manufacturers" has been and is in good faith, and under claim of lawful right; that no fraud or deceit of any kind has been practiced on the public (none being charged in the complaint); that there has been no substitution by respondents of an inferior for a superior article, to the injury and deception of the consuming public); that the wheat "miller" does not manufacture self-rising flour by the use of his grinding mill, but by the same process as that used by respondents manufacturers the same self-rising flour, which is no wise superior to the product of respondents, but which is more apt to be inferior.

6. Respondents are without knowledge of any pro-

ducers of self-rising flour (so-called "blenders") who claim to have been injured in competing with respondents by the use of the words "Milling" or "Manufacturer," and deny that any persons claiming to be so injured are their competitors, but allege on the contrary that the competitors who are objecting to the use of said words by respondents are individuals, firms, or corporations owning wheat grinding mills, but also engaged in the manufacture and sale of self-rising flour in competition with respondents.

With respect to such competitors, respondents insist that they follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors, who are themselves engaged in the same practices condemned by the complaint.

7. Respondents aver that their sales are made to customers who are familiar with their methods, and that none of their customers are in fact deceived or misled into thinking that they operate a wheat-grinding mill; and respondents aver that it would not be to their advantage if they did think so, because better self-rising flour can be made by so-called "blenders." The "miller" is to a large extent dependent on the local crop, but respondents can buy wherever the crop is best.

8. Respondents deny that they have represented, or led their customers or the public to believe, that middleman's profits are excluded, etc., as alleged in the complaint. This charge is a mere unwarranted inference, or conclusion, without facts alleged to support it.

9. Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October, 1916, handed down an opinion, which remains of record, denying the contentions of the so-

called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors.

10. Respondents for further defense submit that the complainant Federal Trade Commission, after ex parte investigation, has prejudiced this case on questions of fact which are of vital, if not controlling importance, in that its authorized agent, acting in its behalf, has in writing stated that said Commission was of the opinion that respondents are not engaged in a manufacturing or milling process.

Respondents do not charge any bad faith, or intentional unfairness, on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law, in this proceeding.

And respondents further submit that if the Federal Trade Commission Act is to be construed as authorizing such procedure, such portion of said Act contravenes the Fifth Amendment to the Constitution of the United States, in that the Federal Trade Commission is not only undertaking to act at the same time as litigant and judge —which is contrary to the fundamental maxim that no man shall be a judge in his own case—but its findings of fact, although erroneous and contrary to the weight of the evidence, are conclusive if supported by any material evidence, and for this reason a full review of its action by an impartial tribunal is denied, and litigants are thereby deprived of their property without due process of law.

11. Respondents further aver that they have no wish, and have never had any wish or intention, to use unfair methods in competition, and have never used the words "Milling" or "Manufacturer" or any other words mentioned in the complaint, with any intent to deceive or make false representations of any kind, being advised on the contrary that said words are truthful and fully authorized under the facts hereinbefore set out; and respondents submit that they should not be required to give up the trade names under which a valuable good will has been acquired; that this would inflict an unnecessary

loss and hardship on respondents, and would in no wise benefit the public.

12. Respondents further state that they and other Nashville manufacturers of self-rising and processed flour supply a trade which is accustomed to buy in small quantities, and such service is an economic necessity in said territory, and is in the interest of dealers and of the consuming public, and enables consumers to obtain these products at a lower price than would be possible if such service were withdrawn or discontinued.

Respondents further aver that all self-rising and processed flour is of the same general type, whether manufactured by the so-called "millers" or the so-called "blenders," and that competition between them can only be determined, and is in fact determined, by three factors, to-wit, price, quality, and service. The grinding of flour in a particular mill is not, and cannot be, a factor.

Wherefore, respondents having fully answered, pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville Trust
Building,
Nashville, Tennessee.

AMENDED COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Snell Milling Company, a corporation, and Thomas E. Snell as President and individually, J. A. Stevens as Vice President and individually and Percey Myatt as

Secretary and individually, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: Respondent, Snell Milling Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its principal place of business in the City of Nashville, State of Tennessee. The respondents, Thomas E. Snell, J. A. Stevens and Percey Myatt are the President, Vice President and Secretary, respectively, of said corporation, and direct and control and manage its business.

Paragraph Two: Respondent, Snell Milling Company, is engaged in the business of purchasing various lots and grades of wheat flour from mills located in the middle west which it causes to be transported to its principal place of business in the City of Nashville and there blending and mixing the flours so purchased by it and putting up in sacks and offering for sale and selling the mixtures and blends resulting therefrom, in some cases adding leavening agents such as baking powder to the blends or mixtures producing the commodity known to the public and in the trade as "Self-rising flour." In the course and conduct of its business as aforesaid said respondent solicits orders for its products from dealer in various states other than Tennessee, and contracts to sell and deliver and does sell and cause to be transported to purchasers outside the State of Tennessee its products as above described. Said respondent is in competition with individuals, partnerships and corporations likewise engaged in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour; or purchase the flour they offer for sale, whether as plain or self-rising, and do not in their trade names or otherwise in the conduct of their business use the term "mill," or "mills," or "miller," or "milling" or otherwise represent that they are engaged in the manufacture of flour as above described. Respondent in carrying on its business as aforesaid solicits orders and sells its product largely to retail grocers through the mail service.

Paragraph Three: Respondent, Snell Milling Company, in the course and conduct of its business as afore-

said solicits orders and sells its products under the name of "Snell Milling Company" and uses upon its letterheads and other business correspondence such terms and representations as:

"SNELL MILLING COMPANY
Manufacturers of
High Grade Flour
Every Sack Guaranteed"

Respondent in its business correspondence and literature makes other representations which have the capacity and tendency to lead dealers and prospective customers to believe that it operates a mill and manufactures as above described, the flour sold by it.

Paragraph Four: Respondent, Snell Milling Company, also solicits orders for and sells its products under the trade name "Peabody Mill Company." The letterheads and business correspondence and other literature of respondent used by it in carrying on its business under the name of Peabody Mill Company bears the caption:

"PEABODY MILL COMPANY
Manufacturers of Quality Flour."

In the conduct of its business under the name of Peabody Mill Company respondent makes other representations which have the capacity and tendency to lead dealers and prospective customers to believe that it operates a mill and manufactures, as above described, the flour sold by it; whereas in truth and in fact "Peabody Mill Company" is merely a trade name.

Paragraph Five: In the course and conduct of its business as aforesaid respondent, Snell Milling Company, delivers the various blends of flour sold by it to purchasers in sacks on which are displayed the names and designs, or brands, adopted by it for its blends and the words "Snell Milling Company" or "Peabody Mill Company."

Paragraph Six: Respondent, Snell Milling Company, owns and operates no mill or machinery other than certain devices for blending or mixing lots and grades of flour purchased from millers as above described and in some cases adding leavening agents. It manufactures no flour by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour and owns or operates no mill or machinery fitted for that purpose.

Amended Complaint

Paragraph Seven: The use by respondent, Snell Milling Company, of its corporate name and the trade name "Peabody Mill Company" in its business and the representations in its business correspondence and otherwise as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of plain and self-rising flour to believe that in purchasing its products they are buying direct from a miller or manufacturer of flour as above described without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of its flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce who make, as above described, the flour they offer for sale and with sellers of flour likewise engaged in interstate commerce who do not so manufacture but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondent are false and misleading and tend to take away their business.

Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission on this 4th day of September, A. D., 1929, now here issues this its amended complaint against respondents.

NOTICE.

Notice is hereby given you, Snell Milling Company, and Thomas E. Snell, J. A. Stevens, and Percey Myatt, respondents herein, that the 4th day of October, A. D. 1929, at 2 o'clock in the afternoon is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

Amended Complaint

You are notified and required on or before said date, to file with the Commission an answer to the complaint. If answer is filed appearance on that date will not be required and the hearing on the charges will be postponed to a later date, due notice of which will be given. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule III) provide as follows:

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint) file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegations of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to appear to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, The Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 4th day of September, A. D. 1929.

By the Commission:

(Seal) Otis B. Johnson,
Secretary.

ANSWER TO AMENDED COMPLAINT—Filed Oct. 3, 1929.

The Joint and Separate Answer of Snell Milling Company, a corporation, Thomas E. Snell, as President and individually, J. A. Stevens, as Vice President and individually, and Percey Myatt, erroneously sued as Secretary and individually, to the Amended Complaint in this cause filed against them.

Respondents for answer say:

1. It is admitted that respondent Snell Milling Company is a corporation, organized in 1925, and doing business under the laws of Tennessee, with its office and principal place of business in Nashville, Tennessee; that the respondents Thomas E. Snell and J. A. Stevens are respectively President and Vice President thereof; but respondents deny that the said Percey Myatt is Secretary and Treasurer of said corporation, and aver on the contrary that he has no connection, officially, or otherwise, with said corporation, and is now engaged in another business, and that he was erroneously joined as party to this proceeding.

It is admitted that said corporation is engaged in the manufacture of self-rising or processed flour in the City of Nashville Tennessee but it is denied that said business and the process of manufacturing said products are correctly described in the complaint.

2. It is admitted that respondent corporation contracts to sell, and sells and delivers its products outside the State of Tennessee.

3. Respondents admit that said corporation is in competition with others, in making and distributing said products but are without knowledge as to whether said competitors are individuals, partnerships, or corporations, or as to whether they are engaged in Interstate Commerce, or as to whether they manufacture the flour sold by grinding or crushing wheat, or as to whether they purchase the flour which they offer for sale, and do not, in their trade names, or otherwise, use the term "Mill," "Miller," or "Milling," or otherwise represent that they are engaged in the manufacture of flour, etc., as alleged in the complaint.

4. It is denied that respondent corporation solicits orders and sells its products largely to retail grocers through the mail service.

5. Respondents deny that those of their competitors who are so-called millers grind all the self-rising flour

which they sell in competition with respondent corporation, and on the contrary aver that they, to a greater or less extent, buy flour from others, which they make into self-rising flour by the same method used by respondents, and put out this product in their own bags and under their own brands; and respondents aver that the same is true with respect to "processed" flour.

6. Respondents admit that in the conduct of their business, as aforesaid, said corporation solicits orders, and sell its products, not only under the corporate name of Snell Milling Company, but under the trade name of "Peabody Mill Company," and also under the trade name of "Mero Mills," having acquired the bags, stock of flour, good will, brands and trade name of said "Mero Mills" on the ———— day of July, 1928.

Respondents state, on information and belief, that on the ———— day of March, 1929, after said "Mero Mills" had ceased to do any business for many months, and was in process of liquidation, the Treasurer, or former Treasurer, of said company, without respondents' knowledge or consent, undertook to enter into a stipulation with the Complainant Federal Trade Commission, to cease and desist from the use of the word "Mills," etc. Respondents have since been furnished with a copy of a letter, purporting to have been written to Complainant Federal Trade Commission, under date of March 12, 1929, referred to file No. 1-4664, in which it is stated that said company was liquidated in July, 1928, with the exception of real estate and accounts receivable; that the bags, stock of flour, good will, brands and trade name was sold to respondent corporation; that the charter would be surrendered in the near future; that the "Mero Mills" had not sold or purchased flour since the date above stated; and that the only business being transacted by the corporation was the collection of accounts receivable and looking after real estate.

Respondents are advised and submit that the signing of such stipulation (if valid for any purpose, in view of the facts hereinbefore set out) could not bind or affect the rights of these respondents.

7. Respondents deny that the letter-heads, bags, and advertising matter, and the statements therein appearing, are correctly described in the complaint.

8. Respondents admit that the words "Mill," "Milling," and "Manufacturer" are used in connection with the letter-heads, advertising matter, and bags, in the conduct of the business.

Answer to Amended Complaint

9. Respondents deny that in the conduct of their business, under the name of "Peabody Mill Company," any representations are made which have the capacity and tendency to lead dealers and prospective customers to believe that respondent corporation is operating a wheat-grinding mill.

10. Respondents deny that said corporation owns or operates no mill or machinery other than certain mixing devices, etc., and aver that they own machinery adapted to the manufacture of self-rising and processed flour, which is both a milling and manufacturing operation, the value of respondents' plant being approximately $..... ....., of the machinery and equipment, approximately $....., and of the investment, capital, etc., approximately $.....; or a total investment of approximately $..... Respondents' plant has a capacity of about ..... barrels a day on a twenty-four-hour basis. In 1928 respondents did a business of approximately $.....

It is true that respondent corporation grinds no wheat, or other cereals, and owns no wheat-grinding machinery.

11. Respondents deny that the use of the aforesaid trade names with the word "Mills" or "Milling," separately or in combination with the term "Manufacturer," or any other statements on respondent corporation's letter-heads, bags, etc., has any tendency to make dealers or prospective customers or consumers believe that they are buying flour from a miller and manufacturer without a middleman's profits, etc., as claimed in the complaint.

12. Respondents deny that any false representations are thereby made, and deny that these alleged practices, if proven, constitute any unfair competition with millers and makers of self-rising flour, or processed flour, alleged to be likewise engaged in Interstate Commerce, etc.

13. Respondents deny that said alleged actions have the effect of taking away business improperly from said alleged competitors, and on the contrary aver that said conduct, if proven, could have no such possible effect:

(a) Because the so-called "Millers" do not and cannot make self-rising flour with their grinding mills, but must first obtain raw flour, either by grinding it, or by purchasing the same, and then turn it into self-rising flour.

(b) Because said "Millers" obtain no advantage from making self-rising flour from the flour which they grind, but are rather at a disadvantage, both as to cost of pro-

duction of the raw flour, and as to its quality, as will be shown at the hearing.

(c) Because self-rising and processed flour, no matter by whom made or sold, is essentially the same product destined for consumption in a particular region, and the buyers of such flour are governed by three factors, to-wit: price, quality, and service.

(d) Because there is no pretense in the complaint that self-rising or processed flour made by the so-called "miller" is any better than that manufactured by the so-called "blender," and there is no deception of the public by substituting an inferior for a superior article.

14. Respondents aver that those of their competitors who are "Millers" follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors who are themselves engaged, as against respondents, in the same practices condemned by the complaint.

15. Respondents deny, as hereinbefore set out, that the use of the words "Mills," "Milling," or "Manufacturer," misleads, or has a tendency to mislead, any substantial portion of the purchasing or consuming public, in that they may be led to believe they are buying from one who grinds his wheat. But respondents are willing to cut off the possibility of deceiving, or misleading, any purchaser or customer through the use of the words above quoted, and to this end have heretofore offered, and hereby offer, to place on their letter-heads, bags, invoices, etc., in conspicuous lettering the words:

"NOT GRINDERS OF WHEAT"

Respondents believe and state that they are "millers" and "manufacturers" in that they turn out a distinct product by the use of milling machinery—but they are not, and do not claim to be, grinders of wheat, and are willing that this be distinctly and unequivocally stated.

16. Respondents, under the trade names aforesaid, have acquired a valuable good will, and they insist that it would be unjust and inequitable to deprive them of this.

Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufactur-

ing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October, 1916, handed down an opinion, which remains of record, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors, thereby depriving respondents of the valuable good will which they have built up.

17. Respondents deny that this proceeding is in the interest of the public, as claimed in the complaint, and allege on the contrary that said proceeding is actually (though not intentionally) in the interest of a few private individuals, competitors of the so-called "blenders," and that its tendency and effect, if sustained, will be to injure and exploit the consuming public for the benefit of private individuals. Respondents insist that the practices described in the complaint do not substantially tend to effect the public to its injury; deny that this proceeding falls within or is covered by the Act of Congress creating the Federal Trade Commission; and deny that the Complainant, Federal Trade Commission, has jurisdiction of this proceeding.

18. Respondents submit that Section 5 of the Federal Trade Commission Act, and the procedure thereunder, violate the Fifth Amendment to the Constitution of the United States, in that said Federal Trade Commission is not and cannot be impartial, since it acts both as plaintiff and judge in the same proceeding, and because its findings, however erroneous, and however opposed to the weight of evidence, are binding and conclusive on review if supported by any material evidence, and thus a full review by an impartial tribunal is denied, and the litigants before said Commission are thereby deprived of due process of law.

Respondents further submit that the Complainant, Federal Trade Commission, after ex parte investigation,

has prejudged this case on questions of fact, which are of vital, if not controlling importance.

Respondents do not charge any bad faith, or intentional unfairness; on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law in this proceeding.

And now having fully answered, respondents pray that said Complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville
Trust Bldg.,
Nashville, Tennessee.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D. 1929.

Commissioners:
Edgar A. McCulloch, Chairman,
Garland S. Ferguson, Jr.,
C. W. Hunt,
William E. Humphrey,
Charles H. March.

In the Matters of	
Royal Milling Co., et al,	Docket No. 1597
Tennessee Grain Co.,	Docket No. 1598
Nashville Roller Mills,	Docket No. 1599
Snell Milling Co.,	Docket No. 1600
Watauga Milling Co., et al.,	Docket No. 1601
State Milling Co., et al.,	Docket No. 1602
Cherokee Mills Co., et al.	Docket No. 1604

ORDER.

The above-entitled matters coming on for consideration by the Commission on the suggested solutions of the issues raised in the complaints filed July 12, 1929, by Thomas H. Malone, counsel for respondents, and the Commission now being fully advised in the premises,

It Is Ordered that said suggested solutions be considered at the time of final argument on the merits.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

STIPULATION OF COUNSEL.

In the above styled cause it is stipulated and agreed between Baldwin B. Bane, Esq., counsel for Federal Trade Commission, and Thomas H. Malone, counsel for respondents, and subject to the approval of the Federal Trade Commission:

I. That all evidence taken in the case of Francis J. McCarthy, doing business under the names of Watauga Milling Company, etc. (Docket No. 1601), may be considered as part of the evidence herein.

II. That the matters hereinafter covered by further stipulation in this cause may be considered in said cause of Francis J. McCarthy, doing business, etc. (Docket No. 1601), so far as they may be material to the general issues raised by the pleadings.

III. That in addition to the evidence in said cause (Docket No. 1601), the following additional facts are stipulated with reference to this cause:

1. That Snell Milling Company was organized in 1925, as a corporation under the laws of Tennessee, with its office and plant at Nashville, Tennessee. That Thomas E. Snell is President and J. A. Stevens is Vice-President thereof. That Percey Myatt has no connection, official or otherwise, with said Company, and was not connected with it at the time the complaint was filed herein.

2. That said corporation is engaged in business at Nashville, Tennessee, in making "self-rising" flour, and also what is described in the testimony of respondent Francis J. McCarthy (in Docket 1601) as "processed" flour—said operations being conducted along the same lines and by machinery of the same type as that employed and used by the said respondent Francis J. McCarthy.

3. That said corporation also operates under the trade names "Peabody Mill Company" and "Mero Mills," having acquired the bags, stock of flour, good will, brands, and trade name of said "Mero Mills" in July, 1928. This is the same "Mero Mills" mentioned in the testimony of the witness Thomas E. Snell in said cause in Docket No. 1601, at pages 934, et seq., of the record.

4. That the brands put out by the respondent corporation under its own name are as follows:

"Queen of the South"—"Plain."
"Ever White"—"Plain."
"Early Dawn"—"Plain."

"Rose Lawn"—"Plain."
"Evening Star"—"Plain."
"The Keystone"—"Plain."
"K O"—"Plain."
"The Keystone"—"Self-rising."
"Play Mates"—"Self-rising."
"Fortune"—"Self-rising."
"Sky Rocket"—"Self-rising."
"Daddy Ganda"—"Self-rising."
"K O"—"Self-rising."

5. That the brands put out under the name of "Peabody Mill Company" are as follows:

"Melba—"Plain."
"Bungalow"—"Plain."
"Sailor Cap"—"Plain."
"Silver Wave"—"Patent Self-rising."
"Red Hat"—"Self-rising."
"Complete"—"Self-rising."
"Echo"—"Self-rising."

6. That the brands put out under the name "Mero Mills" are as follows:

"Polka Dot"—"Plain and Self-rising."
"Light Wings"—"Plain and Self-rising."
"Fine Line"—"Plain and Self-rising."
"Queens Taste"—"Plain and Self-rising."
"Queen of Wheat"—"Plain and Self-rising."
"Queen of Hearts"—"Plain and Self-rising."
"Sixty-one"—"Plain and Self-rising."
"Bound to Rise"—"Self-rising."

7. That said corporation, in carrying on its business, buys and sells in Interstate Commerce.

8. That of the flour which goes through the processes already described, in said plant, and is afterwards sold to the trade, approximately 85% is "self-rising,' and approximately 15% is "processed."

9. That said corporation, in 1929, did a business which in barrels amounted to approximately 77,880, and in dollars and cents to approximately $557,185.80.

10. That exhibits 1 to 9 inclusive show letters written by said corporation, and sent out to customers, or prospective customers, under the dates shown by the respective exhibits.

Stipulation of Counsel

11. That exhibits 10 to 23 inclusive show the bags, sacks, brands, etc., used by respondent corporation in carrying on its business.

12. That said corporation markets its products chiefly to the retail trade by direct solicitation through the mail.

13. That under date of March 1, 1929, a letter was addressed to Messrs. Bailey & Davies, then acting as counsel for Snell Milling Company, signed by Web Woodfill, Chief Trial Examiner of Federal Trade Commission, which is made exhibit 24 hereto. That a copy of the stipulation, to which reference is made in said letter, is filed as exhibit 25 hereto. These exhibits are subject to the same objections, ruling of the Examiner, and exceptions made with reference to the offer of similar exhibits in Docket 1601, R., p. 1066, et seq., respondents' exhibits for identification 71 and 72.

14. That under date of July 12, 1929, a proposed solution of the controversy between respondent corporation and the Federal Trade Commission was offered—the nature of said proposed solution, and the action of the Commission with respect thereto, being set out in the testimony of the witness Vernon S. Tupper, at pages 1070, et seq., of the record in Docket No. 1601.

IV. That the Federal Trade Commission wrote this respondent corporation, and also the respondents in Docket 1597 (Royal Milling Company), Docket 1598 (Tennessee Grain Co. and Tennessee Milling Co.), Docket 1599 (Nashville Roller Mills), Docket 1601 (Watauga Milling Co.), Docket 1602 (State Milling Co.), Docket 1604 (Cherokee Mills), Docket 1607 (Old Hickory Mills), Docket 1617 (Southern Milling Co.), and also Mero Mills, (which, it is stipulated, is the same Mero Mills mentioned in the testimony of the witness Thomas E. Snell in Docket 1601 at pages 934, et seq., of the record), a letter similar in form to respondents' exhibit 68, as shown in the testimony of the witness Vernon S. Tupper in Docket No. 1601, at page 1039 of the record, requesting from each a list of twenty-five customers; that nine of the above named concerns complied with said request; and that from the names so furnished the Federal Trade Commission obtained the twenty-five merchants or dealers, who were examined in chief on behalf of the Commission in said cause, Docket No. 1601, with the exception of the following two witnesses—Walter Cunningham and C. S. Ragland.

V. That to prevent the expense, delay and trouble incident to a separate trial of this cause, the same may

be heard and determined by the Commission in connection with said cause of Francis J. McCarthy, doing business, etc., Docket No. 1601,—it being agreed that the evidence introduced in said cause (Docket No. 1601) may be looked to by either party as if taken in this cause, and with respect to this respondent corporation, except in so far as changed by this stipulation, and that the record therein shall constitute part of this record.

Thomas H. Malone,
for Respondents.
Baldwin B. Bane.

United States of America

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D., 1931.

Commissioners:
C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the matter of Snell Milling Company, a corporation, Thomas E. Snell, as President and individually, J. A. Stevens, as Vice-President and individually, Percey Myatt, as Secretary and individually.	Docket No. 1600.

FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon the respondents above named charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearances and having filed their answer herein, a stipulation as to the facts was entered into between counsel for the respondents and counsel for the Commission is which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for decision by the Commission on the briefs submitted by counsel for the Commission and counsel for the respondents, and argument by counsel for the Commission and counsel for the respondents, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

Paragraph One: Respondent, Snell Milling Company, is a corporation organized and existing under the

Findings as to the Facts and Conclusion

laws of the State of Tennessee with its office and place of business in Nashville, Tennessee. Respondent corporation was organized in 1925. Thomas E. Snell is President and J. A. Stevens is Vice-President of respondent corporation. Respondents, Thomas E. Snell and J. A. Stevens, manage, control and direct the business of respondent, Snell Milling Company. Respondent Percey Myatt has no connection officially or otherwise with said respondent corporation and was not connected with it at the time the complaint herein was filed. Respondent corporation conducts business under its own name and also under the trade names Peabody Mill Company and Mero Mills. Respondent corporation is engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. It then packs the flour in bags under the brands of its respective trade names, and sells it to dealers located in various states of the United States, but particularly in the Southeastern States. Respondent corporation buys the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to it at Nashville, Tennessee from which point it ships the flour to its customers. In the course and conduct of its business respondent corporation is in competition with other corporations, partnerships, and individuals engaged in the sale of flour in interstate commerce.

Paragraph Two: Respondent corporation puts the flour which it buys from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda, and phosphate. If it is not to be self-rising a little phosphate is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry it to the real or sifter, from whence it goes after being sifted into hopper bins, and thence to the packer where it is packed into bags of the desired sizes. There is no grinding process in the operation. Respondent sells from 7 to 13 brands of flour under each name, but each brand does not represent a dif-

ferent quality or grade of flour. It takes from 10 to 15 minutes to run the flour through the equipment used by respondent corporation. The cost of the machinery in such a plant as the respondent corporation's, having a capacity of 3,000 barrels a day on a 24 hour run, is approximately $20,000 to $25,000, and the total investment approximately $150,000 to $200,000.

Paragraph Three: The grinding of wheat into flour has developed by various steps until today it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphate, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a succession of grinding between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using different numbers of breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A five break mill has eighteen spans of rolls and thirty-two separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middlings, offals, bran, shorts, etc. The bolting or sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of Flour." Bolting or sifting has been done by

the concerns grinding the wheat into flour in this country from the earliest times. The number of boltings or siftings differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the flour, thus improving its baking qualities, and whitens it. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moisture content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour cannot be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades: patent flour, which means that part of the stream of flour which is left after taking off a greater or less per cent of the inferior flour—it is the best flour made by the mill; straight flour, which means one hundred per cent flour, all the flour that is extracted from the wheat berry; clear flour is the flour taken off by the mill after the patent flour has been removed; low grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern grinding wheat into flour with a capacity of about 3,000 barrels a day is about $600,000, and the total investment between $1,000,000 and $1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from eight hours to fifty or sixty hours, due to differences in time required for tempering the wheat.

But if the tempering time is excluded, the time required is from a half hour to one and a half hours, depending upon the number of breaks and boltings used by the concern.

Paragraph Four: Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready for use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about seventy-five years ago. The self-rising flour business was originated or begun in Nashville, Tennessee, by a Dr. Owsley. He operated under the name of Owsley Flour Company and sold through the Southeastern States. This company was succeeded by the Ford Flour Company about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating the mixing of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into the mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondent corporation sells in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondent and who do not represent themselves as mills or milling companies, or manufacturers of flour.

Paragraph Five: Nashville, Tennessee, is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually grinding wheat into flour and selling in the Southeastern territory.

Paragraph Six: Respondent corporation does not have or maintain a laboratory for testing or analyzing the flours which it buys or sells. It uses regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it. By this test the

characteristics or qualities of the flours, such as gluten content, protein content, moisture content, starch content, etc., cannot be determined. Only the relative appearance of the two flours can be gotten from such a test, and this is of little value in approximating even the grade of the flour, because practically all concerns grinding wheat into flour add phosphate and a bleaching agent to the flour on the mill stream. Different concerns add different amounts of such, and a greater amount of bleaching makes a lower grade of flour appear better. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. A difference in the granulation of the flour and in the amount of the total break of the wheat berry contained in the flour affects very materially the appearance of the flour. The quality and characteristics of the flour cannot be determined by the paddle test, and respondent corporation by this test cannot maintain uniformity of brands or grades. The grade and quality of all flours are determined by their chemical analysis. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondent corporation's plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not called or known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

Paragraph Seven: Respondent corporation represents itself as "Snell Milling Company. Manufacturers of High Grade Flour"; "Peabody Mill Company. Manufacturers of Quality Flour"; "Mero Mills. Manufacturers of Quality Flours." In the letters, circulars and literature which respondent corporation circulates among the trade in its efforts to sell flour it makes such statements as the following:

> "When you look at the price below, and compare with prices of other mills, you will figure it is impossible for any mill to put out guaranteed flour at such an unheard of low price, and you lay this letter aside and not order. * * * You can always save yourself money by paying cash. This mill is simply

run on a cash proposition. That's the reason these prices are possible."

And:

"The volume of business that any mill does is one of the main factors that serve to hold the price down. This is the principle upon which this mill is built."

And:

"You understand we are able to give you this discount because we will sell to you direct and not through a wholesale jobber, for as you perhaps know 40c per barrel is considered the legitimate profit of the jobber, but when you buy flour direct from us we feel that we can give you the benefit of this jobber's profit."

And:

"There can be do doubt but what the above prices are much too cheap considering the present market and what it is costing us to make our brands of flour, and it is our suggestion to our customers that they mail us either an order or a booking immediately so as to be sure and get the benefit of these prices."

And:

"As you will note we make no difference in price for plain and self-rising flour of the same grade, although it is customary with a great many mills to charge 25c per barrel over the plain for self-rising of the same quality. We invite your comparison of these prices with other mills, and will be glad to have you call us over 'phone or wire us our expense if interested."

Paragraph Eight: The containers for respondent corporation's flour have on them the corporate or trade name under which it is selling the particular flour such as "Snell Milling Company," "Peabody Mill Company," "Mero Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Queen of the South. Superb Patent Flour." "Early Dawn. Standard Patent Flour," "Fortune. Superb Self-Rising Flour," "Daddy Gander. Self-Rising Flour," "Melva. Highest Patent Flour," "Red Hat. Highest Patent Self-Rising Flour." There is no such term as "process flour" or "processed

flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondent corporation's bags, labels, or containers, or in any of its literature as descriptive of any of its flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Paragraph Nine: When the term "mills" or "milling company" or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than from one that bought the flour from a grinding concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern a more uniform product or get a better product for less money because of the elimination of a middleman's profit or costs. Many persons, dealers and consumers, have been buying respondent corporation's flour believing it to be, because of the use of such words or terms in the names under which it does business and because of its representation that it is a "Manufacturer of Flour," a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as willing, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondent corporation's use of such words or terms in the names under which it does business and its representation that it is a manufacturer of flour tend to and do divert trade to respondent corporation from concerns actually grinding wheat into flour and selling in the States in the Southeastern section of the United States, and from concerns engaged in the same character of business as respondent

and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business, or represent that they are manufacturers of flour.

CONCLUSION.

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

(Seal)

C. W. Hunt,
Chairman.

Dated this 16th day of
April, A. D. 1931.

Attest:

Otis B. Johnson,
Secretary.

United States of America

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D., 1931.

Commissioners:
C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the matter of Snell Milling Company, a corporation, Thomas E. Snell, as President and individually, J. A. Stevens, as Vice-President and individually, Percey Myatt, as Secretary and individually.	Docket No. 1600.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It Is Now Ordered that the respondents, Snell Milling Company, a corporation, Thomas E. Snell, President, and J. A. Stevens, Vice-President and each individually, their representatives, agents and employees and the representatives, agents an employees of each of them, do cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or corporate name or any other name which includes the word "Mills" or the words

"Milling Company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such title or name, or by or through any such representations.

It Is Further Ordered, that the respondents above named within sixty (60) days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

By the Commission.

(Seal)

Otis B. Johnson,
Secretary.

United States of America

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D., 1931.

Commissioners:
C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the matter of Snell Milling Company, a corporation, Thomas E. Snell, as President and individually, J. A. Stevens, as Vice-President and individually, Percey Myatt, as Secretary and individually.	Docket No. 1600.

ORDER OF DISMISSAL.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It Is Now Ordered that the charges of said complaint against Percey Myatt be, and the same are hereby dismissed.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

United States of America

BEFORE FEDERAL TRADE COMMISSION.

In the Matter of J. A. Wells, J. M. Wilkerson, H. P. Johnson, and Mrs. H. P. Johnson, Copartners, doing business under the names of State Milling Company, and Myracle Milling Company, and individually,	Docket No. 1602

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that H. A. Wells, J. M. Wilkerson, H. P. Johnson and Mrs. H. P. Johnson, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: The respondents and each of them are members of a partnership which has been for three years last past and is engaged in the City of Nashville, State of Tennessee, in purchasing flour from mills located throughout the Middle West which they cause to be transported to their place of business in the City of Nashville, where it is blended and mixed with certain leavening agents such as baking powder, to produce a commodity known to the public and dealers as "self-rising flour." In the course of their business as aforesaid, the respondents have, during the period above named, practiced and are now practicing the acts and things described in the following:

Respondents solicit orders for self-rising flour produced by them, from dealers in States other than Tennessee, and contract to sell and deliver, and do sell and cause to be transported to purchasers outside the State of Tennessee, their products as above described. Respondents, in said business, are in competition with individuals, partnerships and corporations likewise engaged

in the business of selling self-rising flour in interstate commerce who either grind the flour they mix as aforesaid, or purchase the flour they so use and do not represent that they grind the flour so used. Respondents, in carrying on their business as aforesaid, solicit orders and sell their products principally through the mail service.

Paragraph Two: Respondents, in the conduct of their business as aforesaid, solicit orders and sell their products under the names of the "State Milling Company" and the "Myracle Milling Company." In connection with their business conducted under said trade names, respondents use the following letterheads:

Complaint

"STATE MILLING COMPANY
Superlative Flours
Daily Capacity 500 Barrels
Plain Flours—Self-Rising Flours."

"MYRACLE MILLING COMPANY
High-Grade
Flour
Daily Capacity 500 Barrels."

They also advertise their business as:

"State Milling Company, Manufacturers of High-Grade Flours" and "Our products are made from select wheat in a perfectly equipped mill by millers who know how." Circulars sent by them to prospective customers state, in connection with lists of their products under various brands: "Why you should buy from us. You are buying direct from the mill and thereby eliminating all unnecessary middleman's profit."

Respondents' products are sold under a number of brands, some of which are described as "Patent" and "Patent Plain." These products are packed and delivered in cotton or other bags on which are stamped the name of the particular brand and "Manufactured for Myracle Milling Company," and "Manufactured by State Milling Company" and "State Milling Company." There are no corporations or other organizations corresponding to the aforesaid trade names, "State Milling Company" and "Myracle Milling Company," and they are fictitious so far as they indicate separate businesses or plants. Respondents own or operate no mill or machinery other than certain devices for mixing flour purchased from various millers with other ingredients as above described. They grind no wheat or other cereals and own and operate no machinery fitted for that purpose.

Paragraph Three: The use by respondents of the trade names "State Milling Company" and "Myracle Milling Company," as aforesaid, in their business, and the representations on their letterheads and in their advertising and circulars, and on the bags in which their products are sold and delivered as hereinbefore described, have the capacity and tend to lead dealers and prospective purchasers of self-rising flour to believe that in purchasing their products from respondents they are buying flour direct from a miller and manufacturer of flour without the intervention of a middleman or any ele-

ment of cost of a middleman's profits, and to induce purchases of respondents' products by dealers and prospective purchasers on that understanding and belief; and said representations constitute unfair methods of competition with millers and manufacturers of flour likewise engaged in interstate commerce who grind the flour they offer for sale alone or mixed as self-rising flour, and with producers and sellers of self-rising flour likewise engaged in interstate commerce who do not grind and manufacture but buy said flour, made by others, used in their products, and do not represent themselves to be millers or manufacturers of flour; to the injury of said millers and producers of self-rising flour, in that said representations of respondents tend to take away their business by false representations.

Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission, on this 20th day of April, A. D., 1929, now here issues this its complaint against respondents.

NOTICE.

Notice is hereby given you, J. A. Wells, J. M. Wilkerson, H. P. Johnson and Mrs. H. P. Johnson, respondents herein, that the 4th day of June, A. D., 1929, at 10.30 o'clock in the forenoon, is hereby fixed as the time, and the offices of the Federal Trade Commission, in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required within thirty (30) days from service of the complaint, unless such time be extended by order of the Commission, to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answers and failure to answer (Rule III) provides as follows:

Complaint

(1) In case of desire to contest the proceeding the respondent shall, within 30 days from the service of the complaint, unless such time be extended by order of the Commission, file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding, or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint, and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 20th day of April, A. D. 1929.

By the Commission:

(Seal) Otis B. Johnson,
Secretary.

THE JOINT AND SEPARATE ANSWER OF J. A. WELLS, J. M. WILKERSON, H. P. JOHNSON, AND MRS. H. P. JOHNSON, INDIVIDUALLY AND AS COPARTNERS, TO THE COMPLAINT IN THIS CAUSE FILED AGAINST THEM—Filed May 20, 1929.

Respondents for answer say:

Answering Paragraph One:

1. They admit that they and each of them are members of a partnership doing business in Nashville, Tennessee, but deny that said business is correctly described in the complaint, as to duration or method. Respondents have been engaged in the manufacture (not mixing) of self-rising flour since January 1st, 1924, at which time they purchased the good will and equipment of the State Milling Company which cost them $32,500.00. Their predecessor in the business, known as the State Milling Company, had carried on the manufacture of self-rising flour under that name in the same location since about 1912.

The making of self-rising flour consists of running raw flour and certain other ingredients through milling machinery, in a certain manner, which results in a new article, a distinct product, and is both a milling and a manufacturing process.

2. It is admitted that respondents solicit orders for self-rising flour manufactured by them from dealers in States other than Tennessee, and sell and cause their product to be transported to purchasers outside of said State.

3. It is admitted that others compete with respondents in the sale of self-rising flour, but respondents are without knowledge as to whether these competitors are individuals, partnerships, or corporations, or as to what extent, if any, they are engaged in interstate commerce.

Respondents deny that those of said competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with respondents, and on the contrary aver that they, to a greater or less extent, buy flour, which they make into self-rising flour by the same process used by respondents, and put out this product in their own bags and under their own brands, and respondents insist that "unfair competition" cannot be claimed for their protection, as hereinafter shown.

Respondents are without knowledge of any so-called

blenders of self-rising flour, in competition with respondents, "who do not represent that they grind the flour so used" as alleged in the complaint.

4. Respondents deny that they solicit orders and sell their products principally through the mail—the fact being that they use not only the mail but a considerable number of salesmen.

Answering Paragraph Two:

1. It is true that respondents carry on their business and sell their products under the names of the "State Milling Company" and the "Myracle Milling Company," and respondents aver that the said business had for many years been carried on under the name of the "State Milling Company," as hereinbefore set out, and the name "Myracle Milling Company" is a trade name.

2. Respondents admit that letter heads used are used in their business, containing the word "Milling," and referring to daily capacity, etc., as alleged in the complaint, the explanation being that respondents were actually engaged in a milling process and used the trade names containing the word "Milling" without intent to deceive, and without in fact deceiving either their customers or the public; and that the statements as to daily capacity were true and likewise made without intent to deceive, and without deceiving, either their customers or the public.

3. Respondents are without knowledge of the alleged advertising matter set out in the complaint. No facts as to date, place or other means of identification are stated in the complaint. Respondents, however, deny that they customarily or habitually advertise in the manner stated, or habitually or customarily use such expressions, or expressions of like import, as seems to be charged by complainant.

Respondents are also without knowledge as to the alleged statements made in circulars—many circulars of various kinds having been sent out by respondents, and no date being given in the complaint—and they do not know whether the alleged statements quoted were made by them or by their predecessors, but aver that if the statement as to eliminating middleman's profits, etc., was made by them it was true in the sense and in the connection in which the language was used, and has reference to the fact that respondents were then soliciting trade from persons other than jobbers, and the language, if used, had reference to eliminating jobber's profits on

self-rising flour, and was not intended to deceive, and could not deceive, the purchasers to whom the circular was sent.

4. It is true that respondents' products are sold under a number of brands, some of which are described as "Patent" and "Patented Plain," but these are technical words, well known in the trade and would not, to any of respondents' customers, or to any person dealing in flour, convey the idea that respondents were grinding this flour; and in so describing respondents' brands there was no intent to deceive, and no deception of their customers.

5. It is true that the products of respondents are packed and delivered in cotton or other bags on which are stamped the name of the particular brand, and the phrases as to manufacturing, etc., quoted in the complaint, the explanation being that said products were actually manufactured, as hereinbefore set out, by a milling process, and that the names used are the trade names of respondent.

6. It is also true that there are no corporations corresponding to the names "State Milling Company" and "Myracle Milling Company," but it is denied that these are fictitious names, but are genuine trade names used in accordance with the wide-spread practice followed by partnerships in this State, and without intent to deceive, and without actually deceiving, respondents' customers.

7. Respondents deny that they own or operate no mill or machinery other than certain devices for mixing flour, etc., the fact being that the making of self-rising flour is a manufacturing process, and that respondents own the necessary machinery and equipment for said process, which was purchased by them at a considerable expense, as hereinbefore set out.

8. Respondents admits that they grind no wheat or other cereals, and own and operate no machinery fitted for that purpose, their plant and machinery being adapted to the manufacture of self-rising flour by a milling process, as hereinbefore set out.

Answering Paragraph Three:

1. Respondents deny that the use of said trade names, and any representations made on their letterheads and in their advertising and circulars, and on the bags in which their products are sold and delivered, have the capacity, and tend to lead dealers and prospective purchasers of self-rising flour to believe that in purchasing their products from respondents they are buying

flour direct from the miller and manufacturer of flour without the intervention of a middleman or any element of cost of a middleman's profit, and to induce purchases of respondents' products by dealers and prospective purchasers on that understanding and belief, as charged in the complaint. The wheat "miller" does not make self-rising flour, and cannot make it, by the use of his grinding machinery, but is compelled to first get his raw flour, either by grinding or purchase, and then by a separate milling process and by separate machinery (practically the same as that used by these respondents) turn it into self-rising flour. The "miller" who grinds his own flour has no advantage thereby, for he must absorb the local crop of wheat, which may or may not be good, whereas, the so-called "blender" can buy the best flour wherever it is produced, and can buy this flour at actual cost. The explanation of this is that by selling their surplus at actual cost the wheat-grinding "millers" are enabled to keep their mills going night and day, thus greatly reducing cost.

There is no "middleman's profit" involved unless the self-rising flour manufactured in the same way by both "miller" and "blender" is sold through a jobber; and where this is not done, and where the sale is made direct to the retailer, middleman's profits are eliminated, and this might truthfully be said to prospective purchasers.

The so-called "miller" has no advantage as to cost of manufacture, for it costs as much, or practically as much, to manufacture his raw flour as it does for respondents to buy their raw flour, which they obtain very cheaply, for the reason hereinbefore given. The production of self-rising flour is a separate milling process, as to which the so-called "miller" has no advantage, but is rather at a disadvantage.

Respondents accordingly insist that the use of the words "milling," "manufacture," etc., and the phrases alleged to be used in advertising and circulars, have no tendency to deceive, and do not in fact deceive or mislead the customers or prospective customers of respondents.

2. Respondents deny that said representations constitute unfair methods of competition, with millers and manufacturers of flour alleged to be engaged in interstate commerce, who grind the flour they offer for sale alone, or mixed as self-rising flour, and with producers of self-rising flour alleged to be engaged in interstate commerce, who do not represent themselves to be millers or manufacturers of flour, as alleged in the complaint.

Respondents further deny that they are in competition with any sellers of raw or plain flour, and deny that they claim to be manufacturers of plain flour, and deny that their customers believe them to be engaged in the manufacture and sale of plain flour.

3. Respondents deny that they have made any false representations, to the injury of said millers and producers of self-rising flour, and that they have taken away their business by false representations, as alleged in the complaint.

4. Respondents deny that said acts and practices, alleged to have been committed by respondents, are all to the prejudice of the public, and constitute unfair methods of competition within the meaning of the Federal Trade Commission Act, and aver on the contrary that this proceeding, which is in fact (although not intentionally) in the interest of a few private individuals is to the injury of the public, and not within the spirit or letter of the Act.

Answering The Whole Complaint, Respondents, in addition to the defenses hereinbefore set out, for further defense say:

1. Respondents deny that the complainant, the Federal Trade Commission, has jurisdiction of this proceeding.

2. Respondents deny that this proceeding falls within or is covered by the said Act of Congress creating the Federal Trade Commission.

3. Respondents deny that this is a proceeding in the interest of the public, and insist that the practices described in the complaint do not substantially tend to affect the public to its injury.

4. Respondents insist that this proceeding, so far from being in the interest of the consuming public, is in the interest of a few private individuals, competitors of respondents; that the effect of sustaining this proceeding will be to injure the respondents and make their competition less effective, in that they will be charged by said competitors with fraudulent and willfully unfair practices; and that the effect of so reducing the competitive power of respondent will be to ultimately raise the price to the consuming public to its injury.

5. Respondents further state that the use by them of the words "Mill," "Milling," "Manufactured," etc., has been and is in good faith and under claim of lawful right; that no fraud or deceit of any kind has been practiced on the public (none being charged in the complaint);

that there has been no substitution by respondents of an inferior for a superior article to the injury and deception of the consuming public; that the wheat miller does not manufacture self-rising flour by the use of the grinding mill, but, by the same process as that used by respondents, manufactures the same product, which is in no wise superior to the product of these respondents, but which is more apt to be inferior.

6. Respondents are without knowledge of any producers of self-rising flour (so-called "blenders") who claim to have been injured in competing with respondents by the use of the words "Mills," "Milling," or "Manufactured," and deny that any such actors are their competitors, but allege on the contrary, that the competitors who are objecting to the use of said words by respondents are individuals, firms, or corporations owning wheat grinding mills, but also engaged in the manufacture and sale of self-rising flour in competition with respondents.

With respect to such competitors, respondents insist that they are guilty of the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising and processed flour by a separate manufacturing process, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest of and for the protection of competitors who are themselves engaged in the same practices condemned by the complaint.

7. Respondents aver that their sales are made to customers who are familiar with their methods, and that none of their customers are in fact deceived or misled into thinking that they operate a wheat-grinding mill, and they aver that it would be no advantage if they did think so, for better self-rising flour can be made by the so-called "blender," as hereinbefore set out.

8. Respondents deny that they, or any of them, have represented, or led their customers or the public to believe, that middleman's profits are excluded, etc., as alleged in the complaint.

9. Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills, and manufacturing self-rising flour in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nash-

ville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October, 1916, handed down an opinion, which remains of record, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors.

10. Respondents for further defense submit that the complainant Federal Trade Commission, after ex parte investigation, has prejudged this case on questions of fact which are of vital, if not controlling, importance, in that its authorized agent acting in its behalf has in writing stated that said Commission was of the opinion that respondents are not engaged in a manufacturing or milling process.

Respondents do not charge any bad faith or intentional unfairness on the part of the Commission, but they submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law in this proceeding.

And respondents further submit that if the Federal Trade Commission Act is to be construed as authorizing such procedure such portion of said Act contravenes the Fifth Amendment to the Constitution of the United States, in that the Federal Trade Commission is undertaking to act at the same time as litigant and judge—which is contrary to the fundamental maxim that no man shall be a judge in his own case—but its findings of fact, although contrary to the weight of the evidence, are conclusive if supported by any material evidence, and for this reason a full review of its action by an impartial tribunal is denied, and litigants are thereby deprived of their property without due process of law.

11. Respondents further aver that they have no wish and never have had any wish or intention to use unfair methods in competition, and have never used the words "Mill," or "Manufacture," or kindred words mentioned in the complaint with any intent to deceive or make false representations of any kind, being advised, on the contrary, that said words are truthful and fully authorized

under the facts hereinbefore set out; and respondents submit that they should not be required to give up the trade names under which a valuable good will has been acquired; that this would inflict an unnecessary loss and hardship on respondents, and would in no wise benefit the public.

12. Respondents further state that they and other Nashville manufacturers of self-rising and processed flour supply a trade which is accustomed to buy in small quantities, and such service is an economic necessity in said territory, and in the interest of dealers and of the consuming public, and enables consumers to obtain these products at a lower price than would be possible if such service were withdrawn or discontinued.

Respondents further aver that all self-rising and processed flour is of the same general type, whether manufactured by the so-called "millers," or the so-called "blenders," and that competition between them can only be determined, and is in fact determined, by three factors, to-wit, price, quality, and service. The grinding of flour in a particular mill is not, and cannot be a factor.

Wherefore, respondents having fully answered, pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville Trust
Building,
Nashville, Tennessee.

AMENDED COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that J.

A. Wells, J. M. Wilkerson, H. P. Johnson and Mrs. H. P. Johnson, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: The respondents are members of a partnership which is engaged in the City of Nashville, State of Tennessee in the business of purchasing various lots and grades of wheat flour from mills located in the Middlewest, which they cause to be transported to their place of business in the City of Nashville and there blending and mixing the flours so purchased by them and putting up in sacks and offering for sale the mixtures or blends resulting therefrom, in some instances adding leavening agents such as baking powder to the blends or mixtures producing the commodity known to the public and in the trade as "Self-rising flour." In the course and conduct of their business as aforesaid respondents solicit orders for their products from dealers in various states other than the State of Tennessee and contract to sell and deliver and do sell and cause to be transported to purchasers outside of the State of Tennessee their products as above described. Respondents in said business are in competition with individuals, partnerships and corporations likewise engage in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour; or purchase the flour they offer for sale, whether as plain or self-rising, and do not in their trade names or otherwise in the conduct of their business use the terms "Mill", "Mills", "Millers" or "Milling", or otherwise represent that they are engaged in the manufacture of flour as above described, that is that they grind the wheat into the flour which they sell. Respondents in carrying on their business as aforesaid solicit orders and sell their products largely to retail grocers through the mail service.

Paragraph Two: Respondents in the course and conduct of their business as aforesaid solicit orders and sell their products and operate under the names of "State Milling Company" and "Myracle Milling Company." In connection with their business conducted under said trade names respondents use letter-heads upon which appear the following:

Amended Complaint

"STATE MILLING COMPANY
SUPERLATIVE FLOURS
Daily Capacity 500 Barrels
Plain Flours—Self-rising Flours."

"MYRACLE MILLING COMPANY
HIGH GRADE FLOUR
Daily Capacity 500 Barrels."

They also advertise their business as: "State Milling Company, Manufacturers of High Grade Flours," and "Our Products Are Made from Selected Wheat in a Perfectly Equipped Mill by Millers Who Know How." Circulars sent by them to prospective customers state, in connection with lists of their products under various brands: "Why you should buy from us. You are buying direct from the mill and thereby eliminating all unnecessary middleman's profit." In their letters circulars soliciting orders respondents make other representations implying that they are manufacturers of flour as above-described.

Respondents' products are packed, sold and delivered in cotton or other bags on which are stamped the name of the particular brand and "Manufactured for Myracle Milling Company" and "Manufactured by State Milling Company", and "State Milling Company." There are no corporations or other organizations corresponding to the aforesaid trade name. "State Milling Company" and "Myracle Milling Company," and they are fictitious so far as they indicate separate businesses or plants.

Respondents own or operate no mill or machinery other than certain devices for blending or mixing lots and grades of flour purchased from millers as above described, and adding leavening agents. They manufacture no flour by rolling or grinding or other processes of crushing wheat and extracting therefrom the product known as flour and they own or operate no mill or machinery fitted for that purpose.

Paragraph Three: The use by respondents of the trade names "State Milling Company" and "Myracle Milling Company" as aforesaid in their business and representations in their business correspondence and advertising matter and circulars and on the bags in which their products are sold and delivered as hereinabove described and otherwise have the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flours

to believe that in purchasing their products they are buying direct from a miller or manufacturer of flour as above described and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchasers of their flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers and manufacturers of flour likewise engaged in interstate commerce, who make as above described the flour they offer for sale, and with sellers of plain and self-rising flours likewise engaged in interstate commerce who do not so manufacture but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondents are false and misleading and tend to take away their business.

Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914.

Wherefore, the Premises Considered, the Federal Trade Commission on this 6th day of September, A. D., 1929, now here issues its amended complaint against the respondents.

NOTICE.

Notice is hereby given you, J. A. Wells, J. M. Wilkerson, H. P. Johnson, and Mrs. H. P. Johnson, Co-partners doing business under the names State Milling Company and Myracle Milling Company, respondents herein, that the 11th day of October, A. D., 1929, at 2 o'clock in the afternoon is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required on or before said date, to file with the Commission an answer to the complaint. If answer is filed appearance on that date will not be re-

quired and the hearing on the charges will be postponed to a later date, due notice of which will be given. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule III) provide as follows:

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint) file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondents shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegations of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to appear to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, The Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 6th day of September, A. D., 1929.

By the Commission:

Otis B. Johnson,
Secretary.

ANSWER TO AMENDED COMPLAINT—Filed Oct. 3, 1929.

The Joint and Separate Answer of J. A. Wells, J. M. Wilkerson, H. P. Johnson, and Mrs. H. P. Johnson, individually and as copartners, to the amended complaint in this cause filed against them.

Respondents for answer say:

1. It is admitted that respondents and each of them are members of a partnership which has been engaged in the manufacture of self-rising or processed flour in the City of Nashville, Tennessee. Respondents have been engaged in the manufacture of self-rising and processed flour since January 1, 1924, at which time they purchased the good will and equipment of the State Milling Company, which cost them $32,500.00. Said State Milling Company, their predecessor, had carried on this manufacturing business in that name, in the same location, since about 1912.

It is denied that said business and the process of manufacturing said products is correctly decribed in the complaint.

2. It is admitted that respondents contract to sell, and sell and deliver their products outside the State of Tennessee.

3. It is admitted that respondents are in competition with others in making and distributing said products, but they are without knowledge as to whether said competitors are individuals, partnerships, or corporations, or as to whether they are engaged in Interstate Commerce, or as to whether they manufacture the flour sold by grinding or crushing wheat, or as to whether they purchase the flour which they offer for sale, and do not in their trade names or otherwise use the term "Mill," "Miller," or "Milling," or otherwise represent that they are engaged in the manufacture of flour, etc., as alleged in the complaint.

4. It is denied that respondents solicit orders and sell their products largely to retail grocers through the mail service.

5. Respondents deny that those of their competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with respondents, and on the contrary aver that they, to a greater or less extent, buy flour from others, which they make into self-rising flour by the same methods used by respondents, and put out this product in their own bags and under their own

brands; and respondents aver that the same is true with respect to "processed" flour.

6. Respondents admit that in the conduct of their business, as aforesaid, they solicit orders and sell their products under the names of State Milling Company and Myracle Milling Company, and respondents aver that said business had for many years been carried on under the name of State Milling Company, as hereinbefore set out, and that the name Myracle Milling Company is a trade name—the conduct of business under such trade names being an ordinary practice and well recognized business usage.

7. Respondents are without knowledge of the alleged advertising matter set out in the complaint. No facts as to date, place, or other means of identification are therein stated. Respondents, however, deny that they customarily or habitually advertise in the manner stated, or habitually or customarily use such expressions, or expressions of like import, as seem to be charged in the complaint.

Respondents are also without knowledge as to the alleged statements made in circulars (no date being given in the complaint), and they do not know whether the alleged statements quoted were made at all, or if made, were made by them or by their predecessor; but aver that if the statement as to eliminating middle man's profits, etc., was made by them, it was true in the sense and in the connection with which the language was used, and has reference to the fact that respondents were then soliciting trade from persons other than jobbers, and the language, if used, had reference to eliminating jobbers' profits, and was not intended to deceive, and could not deceive the purchasers to whom such circulars were sent.

8. Respondents admit that the words "Mills," "Milling," and "Manufacturer" are used by them in connection with the letter-heads, advertising matter, and bags in the conduct of their business.

9. Respondents admit that there are no corporations corresponding to the names "State Milling Company" and "Myracle Milling Company," but they allege, as heretofore shown, that "State Milling Company" was a trade name which they purchased, and under which business had been previously conducted for many years, and that "Myracle Milling Company" is a trade name, and that the practice of doing business under various trade names is a customary and well recognized business usage.

10. Respondents deny that they own or operate no mill or machinery other than certain mixing devices, etc., and aver that they own machinery adapted to the manu-

facture of self-rising and processed flour, which is both a milling and manufacturing operation, the value of respondents' plant being approximately $.....; and of their machinery and equipment approximately $..... .....; and of their investment, capital, etc., approximately $.....; or a total investment of approximately $..... Respondents' plant has a capacity of about ———— barrels a day on a twenty-four-hour basis. In 1928 respondents did a business of approximately $.....

It is true that respondents grind no wheat, or other cereal, and own no wheat-grinding machinery.

11. Respondents deny that the use of the aforesaid trade names, with the words "mills," or "milling," separately, or in combination with the term manufacturer, or any other statements on respondents' letterheads, bags, etc., has any tendency to make dealers or prospective customers or consumers believe that they are buying flour from a "miller" and "manufacturer" without a middleman's profits, etc., as alleged in the complaint.

12. Respondents deny that any false representations are thereby made, and deny that these alleged practices, if proven, constitute any unfair competition with "millers" and makers of self-rising flour or "processed" flour alleged to be likewise engaged in Interstate Commerce, etc.

13. Respondents deny that said alleged actions have the effect of taking away business improperly from said alleged competitors, and on the contrary aver that said conduct, if proven, could have no such possible effect:

(a) Because the so-called "Millers" do not and cannot make self-rising flour with their grinding mills, but must first obtain raw flour, either by grinding it, or by purchasing the same, and then turn it into self-rising flour.

(b) Because said "Millers" obtain no advantage from making self-rising flour from the flour which they grind, but are rather at a disadvantage, both as to cost of production of the raw flour, and as to its quality, as will be shown at the hearing.

(c) Because self-rising and processed flour, no matter by whom made or sold, is essentially the same product destined for consumption in a particular region, and the buyers of such flour are governed by only three factors, to-wit; price, quality and service.

(d) Because there is no pretense in the complaint that self-rising or processed flour made by the so-called "miller" is any better than that manufactured by the so-

called "blender," and there is no deception of the public by substituting an inferior for a superior article.

14. Respondents aver that those of their competitors who are "millers" follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors who are themselves engaged, as against respondents, in the same practices condemned by the complaint.

15. Respondents deny, as hereinbefore set out, that the use of the words "Mills," "Milling," or "Manufacturer," misleads, or has a tendency to mislead, any substantial portion of the purchasing or consuming public, in that they may be led to believe that they are buying from one who grinds his wheat. But respondents are willing to cut off the possibility of deceiving, or misleading, any purchaser or customer through the use of the words above quoted, and to this end have heretofore offered, and hereby offer, to place on their letter-heads, bags, invoices, etc., in conspicuous lettering the words:

"Not Grinders of Wheat"

Respondents believe and state that they are "millers" and "manufacturers"—in that they turn out a distinct product by the use of milling machinery—but they are not, and do no claim to be, grinders of wheat, and are willing that this be distinctly and unequivocally stated.

16. Respondents, under the trade names aforesaid, have acquired a valuable good will, and they insist that it would be unjust and inequitable to deprive them of this.

Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, in October 1916 handed down an opinion, with remains of record, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour

were engaged in a "milling" and " manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors, thereby depriving respondents of the valuable good will which they have built up.

17. Respondents deny that this proceeding is in the interest of the public, as claimed in the complaint, and allege on the contrary that said proceeding is actually (though not intentionally) in the interest of a few private individuals, competitors of the so-called "blenders" and that its tendency and effect, if sustained, will be to injure and exploit the consuming public for the benefit of private individuals. Respondents insist that the practices described in the complaint do not substantially tend to affect the public to its injury; deny that this proceeding falls within or is covered by the Act of Congress creating the Federal Trade Commission; and deny that the Complainant, Federal Trade Commission, has jurisdiction of this proceeding.

18. Respondents submit that Section 5 of the Federal Trade Commission Act, and the procedure thereunder, violate the Fifth Amendment to the Constitution of the United States, in that said Federal Trade Commission is not and cannot be impartial, since it acts both as plaintiff and judge in the same proceeding, and because its findings, however erroneous, and however opposed to the weight of evidence, are binding and conclusive on review if supported by any material evidence, and thus a full review by an impartial tribunal is denied, and the litigants before said Commission are thereby deprived of due process of law.

Respondents further submit that the Complainant, Federal Trade Commission, after exparte investigation, has prejudged this case on questions of fact, which are of vital, if not controlling importance.

Respondents do not charge any bad faith, or intentional unfairness, on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law in this proceeding.

And now having fully answered, repsondents pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville Trust Bldg.,
Nashville, Tennessee.

United States of America

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D., 1929.

Commissioners:
Edgar A. McCulloch, Chairman,
Garland S. Ferguson, Jr.,
C. W. Hunt,
William E. Humphrey,
Charles H. March.

In the Matters of	
Royal Milling Co., et al.,	Docket No. 1597
Tennessee Grain Co.,	Docket No. 1598
Nashville Roller Mills,	Docket No. 1599
Snell Milling Co.,	Docket No. 1600
Watauga Milling Co., et al.,	Docket No. 1601
State Milling Co., et al.,	Docket No. 1602
Cherokee Mills., et al.	Docket No. 1604

ORDER.

The above-entitled matters coming on for consideration by the Commission on the suggested solutions of the issues raised in the complaints filed July 12, 1929 by Thomas H. Malone, counsel for respondents, and the Commission now being fully advised in the premises,

It is Ordered that said suggested solutions be considered at that time of final argument on the merits.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

STIPULATION OF COUNSEL.

In the above styled matter it is stipulated and agreed between Baldwin B. Bane, Esq., counsel for Federal Trade Commission, and Thomas H. Malone, counsel for respondents, and subject to the approval of the Federal Trade Commission:

I. That all evidence taken in the case of Francis J. McCarthy, doing business under the names of Watauga Milling Company, etc., (Docket No. 1601), may be considered as part of the evidence herein.

II. That the matters hereinafter covered by further stipulation in this cause may be considered in said cause of Francis J. McCarthy, doing business, etc., (Docket No. 1601), so far as they may be material to the general issues raised by the pleadings.

III. That in addition to the evidence in said cause (Docket No. 1601) the following additional facts are stipulated with reference to this cause:

1. That said business was begun in the City of Nashville, Tennessee, by the above respondents, on January 1, 1924, at which time they purchased the good-will and equipment of the State Milling Company for the sum of $32,500.00. Said State Milling Company (their predecessor) had carried on this business under that name, in the same location, since about 1912.

2. That said partnership is engaged in making both "self-rising" flour and also what is described in the testimony of respondent Francis J. McCarthy (in Docket No. 1601) as "processed" flour—said operations being conducted along the same lines and by machinery of the same type as that employed and used by the respondent Francis J. McCarthy.

3. That said partnership also does business under the trade name "Myracle Milling Company."

4. That the brands put out by said partnership under the name "State Milling Company" are as follows:

"Every Woman"—"Standard Patent."
"White Seal"—"Highest Patent."
"No Peer"—"Superlative Patent."
"Red Bird"—"Standard Patent Self-rising."
"Alfixt"—"Highest Patent Self-rising."
"White Poppy"—"Superlative Patent Self-rising."

5. That the brands put out by said partnership under the trade name "Myracle Milling Company" are as follows:

Stipulation of Counsel

"Wonder Worker"—"Standard Patent Plain."
"Dixie Dandy"—"Family Patent Plain."
"Southern Made"—"High Patent Plain."

6. That exhibits 1 to 13 inclusive constitute advertisements made, or letters written, by said partnership to customers, or prospective customers, under the dates shown by the respective exhibits.

7. That exhibits 14 to 26 inclusive, to the stipulation, show the bags, brands, etc., used by said partnership in carrying on its business.

8. That said partnership, in carrying on its business, buys and sells in Interstate Commerce.

9. That of the flour which goes through the processes already described, in its plant, and is afterwards sold to the trade, approximately 50% is "self-rising," and approximately 50% is "processed."

10. Said partnership solicits orders from and sells its products almost exclusively to the retail merchants. This solicitation is accomplished through brokers and by mail direct to the retailer. Business is not solicited from wholesalers.

11. That the total sales made by said partnership, for the year 1929, amounted in dollars and cents to approximately $313,757.44, and the total business in barrels amounted to approximately 51,996.

12. That on February 20, 1929, a letter was addressed to said State Milling Company by Web Woodfil, Chief Trial Examiner, Federal Trade Commission, enclosing a proposed stipulation—said letter being made exhibit 27 hereto, and said proposed stipulation exhibit 28. These exhibits are subject to the same objections, ruling of the Examiner, and exceptions made with reference to the offer of similar exhibits in Docket 1601, R. p. 1066, et seq., respondents' exhibits for identification 71 and 72.

13. That a proposed solution of the controversy between these respondents and the Federal Trade Commission was offered, under date of July 12, 1929—the nature of said proposed solution, and the action of the Commission thereon being as shown in the testimony of the witness Vernon S. Tupper, in said cause in Docket No. 1601, at pages 1071 and 1072 of the record therein.

IV. That the Federal Trade Commission wrote these respondents, and also the respondents in Docket 1597 (Royal Milling Company), Docket 1598 (Tennessee Grain Co. and Tennessee Milling Co.), Docket 1599 (Nashville Roller Mills), Docket 1600 (Snell Milling Co.), Docket 1601 (Watauga Milling Co.), Docket 1604 (Cherokee

Mills), Docket 1607 (Old Hickory Mills), Docket 1617 (Southern Milling Co.), and also Mero Mills, (which, it is stipulated, is the same Mero Mills mentioned in the testimony of the witness Thomas E. Snell in Docket 1601 at pages 934, et seq, of the record), a letter similar in form to respondents' exhibit 68, as shown in the testimony of the witness Vernon S. Tupper in Docket No. 1601, at page 1039 of the record, requesting from each a list of twenty-five customers; that nine of the above named concerns complied with said request; and that from the names so furnished the Federal Trade Commission obtained the twenty-five merchants or dealers, who were examined in chief on behalf of the Commission in said cause, Docket No. 1601, with the exception of the following two witnesses—Walter Cunningham and C. S. Ragland.

V. That to prevent the expense, delay and trouble incident to a separate trial of this cause, the same may be heard and determined by the Commission in connection with said cause of Francis J. McCarthy, doing business, etc., Docket No. 1601,—it being agreed that the evidence introduced in said cause (Docket No. 1601) may be looked to by either party as if taken in this cause, and with respect to these respondents, except in so far as changed by this stipulation, and that the record therein shall constitute part of his record.

Thomas H. Malone,
for Respondent.
Baldwin B. Bane.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D., 1931.

Commissioners:
C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of J. A. Wells, J. M. Wilkerson, H. P. Johnson and Mrs. H. P. Johnson co-partners doing business under the names State Milling Company and Myracle Milling Company, and individually.	Docket No. 1602.

FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon the respondents above named charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearances and having filed their answer herein, a stipulation as to the facts was entered into between counsel for the respondents and counsel for the Commission in which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondents and argument by counsel for the Commission and counsel for the respondents, and the Commission having duly considered the record and be-

ing fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

Paragraph One: Respondents, J. A. Wells, J. M. Wilkerson, H. P. Johnson and Mrs. H. P. Johnson conduct business under the names State Milling Company and Myracle Milling Company. They have conducted such business since January 1, 1924, when they purchased the good will and equipment of a predecessor which had conducted the same business under the name State Milling Company since about 1912. Respondents' place of business is located in Nashville, Tennessee. Respondents are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate, and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour.

They then pack the flour in bags under brands of their respective names, and sell it to dealers located in various states of the United States, but particularly in the Southeastern States. Respondents buy the flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tennessee, from which point they ship the flour to their customers. In the course and conduct of their business respondents are in competition with other co-partnerships, corporations and individuals engaged in the sale of flour in interstate commerce.

Paragraph Two: Respondents put the flour which they buy from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda and phosphate. If it is not to be self-rising a little phosphate is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry it to the reel or sifter, from whence it goes, after being sifted, into hopper bins, and thence to the packer where it is packed into bags of the desired sizes. There is no grinding process in the operation. Respondents sell from 3 to 6 brands of flour under each trade name, but each brand does not represent a different grade or quality of flour. It takes from 10 to 15 minutes to run the flour through the equipment used by respondents. The cost of the machin-

ery in such a plant as the respondents', having a capacity of 3,000 barrels a day on a 24 hour run is approximately $20,000 to $25,000, and the total investment approximately $150,000 to $200,000.

Paragraph Three: The grinding of wheat into flour has developed by various steps until today it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphates, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a succession of grindings between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using numbers of breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A five break mill has eighteen spans of rolls and thirty-two separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middlings, offals, bran, shorts, etc. The bolting or sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of Flour." Bolting or sifting has been done by the concerns grinding the wheat into flour in this country from the earliest times. The number of boltings or siftings

differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the flour, thus improving its baking qualities, and whitens it. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moistrue content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour cannot be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades: patent flour, which means that part of the stream of flour which is left after taking off a greater or less per cent of the inferior flour—it is the best flour made by the mill; straight flour, which means one hundred per cent flour, all the flour that is extracted from the wheat berry; clear flour is the flour taken off by the mill after the patent flour has been removed; low grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern grinding wheat into flour with a capacity of about 3,000 barrels a day is about $600,000, and the total investment between $1,000,000 and $1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from eight hours to fifty or sixty hours, due to differences in time required for tempering the wheat. But if the tempering time is excluded, the time required is from a half

hour to one and a half hours, depending upon the number of breaks and boltings used by the concern.

Paragraph Four: Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready for use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about seventy-five years ago. The self-rising flour business was originated or begun in Nashville, Tennessee, by a Dr. Owsley. He operated under the name Owsley Flour Company and sold through the Southeastern States. This company was succeeded by the Ford Flour Company about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating the mixing of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondents sell in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondents and who do not represent themselves as mills or milling companies, or manufacturers of flour.

Paragraph Five: Nashville, Tennessee, is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually grinding wheat into flour and selling in the Southeastern territory.

Paragraph Six: Respondents do not have or maintain a laboratory for testing or analyzing the flours which they buy or sell. They use regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it. By this test the characteristics or qualities of the flours, such as gluten content, pro-

tein content, moisture content, starch content, etc., cannot be determined. Only the relative appearance of the two flours can be gotten from such a test, and this is of little value in approximating even the grade of the flour, because practically all concerns grinding wheat into flour add phosphate and a bleaching agent to the flour on the mill stream. Different concerns add different amounts of such, and a greater amount of bleaching makes a lower grade of flour appear better. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. A difference in the granulation of the flour and in the amount of the total break of the wheat berry contained in the flour affects very materially the appearance of the flour. The quality and characteristics of the flour cannot be determined by the paddle test, and respondents by this test cannot maintain uniformity of brands or grades. The grade and quality of all flours are determined by their chemical analysis. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondents' plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not called or known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

Paragraph Seven: Respondents represent themselves as "State Milling Company. Manufacturers of High Grade Flours. Daily Capacity 500 Barrels," and "Myracle Milling Company. High Grade Flour. Daily Capacity 500 Barrels." In the letters, circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

> "Our products are made from select wheat in a perfectly equipped mill by millers who know how."

And:

> "We are very anxious for you to give our flour a trial for it is made from the best #2 red wheat which produces a product unequalled and our overhead is very light which enables us to sell cheaper than most of our competitors.

Findings as to the Facts and Conclusion

"We are selling considerable flour in your state, both in carload lots and in smaller amounts and it is giving universal satisfaction. Each bag leaving our Mill carries an absolute Guarantee of Perfect Satisfaction or Money Refunded."

And:

"We are glad to be able to give you advantage of the exceedingly good purchases we have made in wheat and we now call your attention to our Greatly Reduced Prices. We believe this is the opportune time for you to buy and you will make no mistake in replenishing your stock to its full capacity.

"When you buy from us you are buying direct from the mill, thereby eliminating all unnecessary middleman's profit. Our flour is made from #2 soft red wheat acknowledged to be the best wheat grown for the manufacture of flour, and we invite a comparison of its quality with any other flour regardless of price."

And:

"For the past six weeks we have had a nice stock of wheat on hand and have been giving you the advantage of it by quoting you considerable lower than the market, however our supply bought on the lower market is about exhausted and today cash wheat is very strong and shorts and bran have gone up some $4 per ton making flour advance in proportion to this. We have held off as long as we can and we are now forced to raise prices but we are going to make the smallest possible one in order to get by. You will not be able to duplicate the quality of our flour elsewhere without paying quite a bit more and we trust you will let us Serve You All Your Needs."

Paragraph Eight: The containers for respondents' flour have on them the trade name under which they are selling the particular flour such as "Manufactured by State Milling Company," "Manufactured by Myracle Milling Company." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Red Bird. Self-Rising Flour," "Southern Maid. Superlative Patent Flour," "Wonder Worker. Standard Patent Flour," "No Peer. Highest Patent Flour," "Every Woman. High Quality Flour," "Alfixt. Self-Rising Flour."

Findings as to the Facts and Conclusion

There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags, labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Paragraph Nine: When the term "mills" or "Milling company," or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than from one that bought the flour from a grinding concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern a more uniform product or get a better product for less money because of the elimination of a middleman's profit or costs. Many persons, dealers and consumers, have been buying respondents' flour believing them to be, because of the use of such words or terms in the names under which they do business and because of their representation that they are "Manufacturers of Flour," a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as milling, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondents' use of such words or terms in the names under which they do business and their representation that they are manufacturers of flour tend to and do divert trade to respondents from concerns actually grinding wheat into flour and selling in the States in the Southeastern section of the United States, and from concerns engaged

in the same character of business as respondents and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business, or represent that they are manufacturers of flour.

CONCLUSION.

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

C. W. Hunt,
Chairman.

(Seal)

Dated this 16th day of April, A. D. 1931.

Attest:

Otis B. Johnson,
Secretary.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D., 1931.

Commissioners:
C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of J. A. Wells, J. M. Wilkerson, H. P. Johnson and Mrs. H. P. Johnson co-partners doing business under the names State Milling Company and Myracle Milling Company, and individually.	Docket No. 1602.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It Is Now Ordered that the respondents, J. A. Wells, J. M. Wilkerson, H. P. Johnson and Mrs. H. P. Johnson co-partners doing business under the names State Milling Company and Myracle Milling Company, as co-partners and individually, their representatives, agents and employees and the representatives, agents and employees of each of them, do cease and desist from carrying on the business of selling flour in commerce among the several

States of the United States under a trade name or any other name which includes the words "Milling Company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a fatcory or mill wherein is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such title or name, or by or through any such representations.

It Is Further Ordered, that the respondents above named within sixty (60) days from the notice thereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

United States of America

BEFORE FEDERAL TRADE COMMISSION

In the Matter of E. C. Faircloth, Jr., E. C. Faircloth, Sr., F. B. Evers, and Estate of C. K. Evers, Copartners, doing business under the name of Cherokee Mills, and individually.	Docket No. 1604.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission to define its powers and duties, and for other purposes," the Federal Trade Commission charges that E. C. Faircloth, Jr., E. C. Faircloth, Sr., F. B. Evers and the estate of C. K. Evers, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: The respondents and each of them are members of a partnership which has been for three years last past and is engaged, in the City of Nashville, State of Tennessee, in the business of purchasing flour from flour mills in various States of the Middle West, which they cause to be transported to their place of business in the City of Nashville where it is blended and mixed with certain leavening agents such as baking powder, to produce a commodity known to the public and dealers as "self-rising flour." In the course of their business as aforesaid, the respondents have, during the period above named, practiced and are now practicing the acts and things described in the following:

Respondents solicit orders for their products from dealers in various States other than Tennessee, and contract to sell and deliver, and do sell and cause to be transported to purchasers outside of the State of Tennessee their products as above described. Respondents in said business are in competition with individuals, partnerships and corporations likewise engaged in the business of selling self-rising flour in interstate commerce

who either grind the flour they mix as aforesaid, or purchase the flour they so use, and do not represent that they grind the flour so used. Respondents, in carrying on their business as aforesaid, solicit orders and sell their products principally to retail grocers, through the mail service.

Paragraph Two: Respondents also operate a plant in the City of Birmingham, Alabama, for the preparation of self-rising flour as above described, and conduct the sale of their products at said plant under the names of Cherokee Mills and Alabama Flour Company.

Paragraph Three: In connection with their business conducted under said trade names respondents, in their correspondence soliciting orders and selling their products as aforesaid, use the following letter heads:

"CHEROKEE MILLS
Capital $500,000.
Quality Flour."

On the letterhead also appears a picture of extensive buildings with large advertising signs across them reading "Cherokee Mills, High Grade Flour." In some of their form letters circulated in the course of their business as aforesaid, respondents represent: "Daily Capacity 2,000 Barrels," "Tip-Top Finest Patent Plain Flour." In their letters soliciting orders, respondents use other representations implying that they are millers and grinders of flour.

Respondents' products are sold under a number of brands. These products are packed and delivered in cotton or other bags on which are stamped in conspicuous letters the name "Cherokee Mills" and "Fancy Patent," "High Patent Flour," "Finest Patent," etc., as well as "Self-Rising."

Paragraph Four: Respondents own or operate no mill or machinery other than devices for mixing flour, purchased by them, with other ingredients as above described, and do not grind the flour they sell.

Paragraph Five: The use by the respondents of the name "Cherokee Mills" in their business and the representations in their business correspondence and otherwise as aforesaid, have the capacity and tend to lead dealers and prospective purchasers of their products to believe that in purchasing them they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman or any element of cost of a middleman's profits, and to induce purchases of their

flour by dealers and prospective purchasers on that understanding and belief; and said practices constitute unfair methods of competition with millers and manufacturers of flour likewise engaged in interstate commerce who grind the flour they offer for sale, alone or mixed as self-rising flour, and with producers and sellers of self-rising flour, likewise engaged in interstate commerce, who do not grind and manufacture, but buy and sell flour, made by others, used in their products, and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and producers of self-rising flour, in that said practices of respondent tend to take away their business by false representations.

Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes," approved September 26, 1914.

Wherefore, The Premises Considered, the Federal Trade Commission, on this 22nd day of April, A. D., 1929, now here issues this its complaint against respondent.

NOTICE.

Notice is hereby given you, E. C. Faircloth, Jr., E. C. Faircloth, Sr., F. B. Evers, and Estate of C. K. Evers, respondents herein, that the 6th day of June, A. D., 1929, at 10:30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Commission, in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required within thirty (30) days from service of the complaint, unless such time be extended by order of the Commission, to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answers and failure to answer (Rule III) provide as follows:

(1) In case respondent shall desire to contest the proceeding such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to file them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 22nd day of April, A. D. 1929.

By the Commission:

Otis B. Johnson,
Secretary.

(Seal)

THE JOINT AND SEPARATE ANSWER OF E. C. FAIRCLOTH, JR., F. B. EVERS, AND ESTATE OF C. K. EVERS, TO THE COMPLAINT IN THIS CAUSE FILED AGAINST THEM—Filed May 22, 1929.

Respondents for answer say:

Answering Paragraph One:

1. It is admitted that there is a partnership engaged in the making of self-rising flour, in Nashville, Tennessee, under the name and style of "Cherokee Mills," but the members of said partnership and the nature and duration of the business are not correctly stated in the complaint, the facts being that the business was started under the name of "Cherokee Mills," in 1910, by E. C. Faircloth, Sr., and C. K. Evers, both of whom are now dead; that said business has been carried on since said date; that the present members of said partnership are Estate of E. C. Faircloth, Sr., Estate of C. K. Evers, E. C. Faircloth, Jr., F. W. Faircloth, and F. B. Evers; and that said partnership, in producing self-rising flour, is engaged in both a milling and manufacturing process, whereby, through the use of machinery, raw flour and other ingredients are turned into a separate product.

2. Respondents admit that they solicit orders for their products from dealers in various States other than Tennessee, and sell said products, and cause the same to be transported to purchasers outside the State of Tennessee.

3. Respondents admit that others compete with them in the sale of self-rising flour, but respondents are without knowledge as to whether these competitors are individuals, partnerships, or corporations, or as to what extent, if any, they are engaged in interstate commerce.

4. Respondents deny that those of said competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with respondents, and on the contrary aver that they, to a greater or less extent, buy flour which they make into self-rising flour by the same process used by respondents, and put out this product in their own bags, and under their own brands, and respondents insist that "unfair competition" cannot be claimed for their protection, as hereinafter shown. Respondents are without knowledge of any so-called "blenders" of self-rising flour in competition with respondents who "do not represent that they grind the flour so used," as alleged in the complaint.

Joint and Separate Answer of Respondents, etc.

5. Respondents deny that they solicit orders and sell their products principally to retail grocers through the mail service.

6. Respondents aver that in addition to the manufacture of self-rising flour, as hereinbefore set out, said partnership since 1925 has owned and operated a grinding plant for the manufacture of stock feed.

Answering Paragraph Two:

Respondents admit that they operate a plant in the City of Birmingham, Alabama, for the manufacture of self-rising flour by the milling process, hereinbefore mentioned, and that they conduct the sale of their products for said plant under the names of "Cherokee Mills" and "Alabama Flour Company," and they aver that this business was begun in 1922.

Answering Paragraph Three:

1. It is true that respondents use letter heads in their business correspondence containing the words "Cherokee Mills," and that on the letter heads is shown a picture of an extensive building, with the words "Cherokee Mills," "High Grade Flours," but respondents aver that this is merely a photograph of their plant, and deny that said letter heads are correctly described (except to the extent already noted) in the complaint.

2. Respondents deny the conclusion (no facts being stated in the complaint) that in their letters soliciting orders they use other representations (or any representations) implying that they are grinders of flour.

3. Respondents are without knowledge of the particular form letters mentioned in the complaint, no date or other means of identification being stated; but they aver that the words "Patent Plain Flour" have a technical meaning, well known in the flour business, and would not lead their customers or any one else conversant with said business, to believe that they were thereby holding themselves out as grinders or producers of raw flour.

4. It is true that respondents' products are sold under a number of brands, and delivered in cotton or other bags on which the name of the brand appears, and also the name "Cherokee Mills"; but respondents deny that except to this extent the lettering on said bags is correctly described in the complaint.

Answering Paragraph Four:

1. It is true that respondents do not grind the flour which they sell, nor have they ever claimed to do so,

their grinding operation being limited to the manufacture of feed, as hereinbefore set out; but respondents deny that they own or operate no mill or machinery other than devices for mixing flour, etc., the fact being that they are not only actually engaged in the manufacture of feed, as hereinabove set forth, but are engaged in the production of self-rising flour, which is itself both a milling and a manufacturing process.

2. Respondents aver that the value of their buildings, machinery, equipment, etc., (Nashville and Birmingham plants combined) is approximately $165,000.00, of which approximately $130,000.00 represents the value of the Nashville plant.

Answering Paragraph Five:

1. Respondents deny that the use by respondents of the name "Cherokee Mills" in their business, and the alleged representations in their business correspondence and otherwise (no facts in this behalf being stated in the complaint) have the capacity and tend to lead dealers and prospective purchasers of their products to believe that in so purchasing they are buying flour direct from a miller and manufacturer of flour, without the intervention of a middleman, or any element of cost of a middleman's profits, and to induce purchases of their flour by dealers and respective purchasers on that understanding and belief, as alleged in the complaint.

2. Respondents aver that the "miller" does not, and cannot, make self-rising flour by the use of his grinding machinery, but is compelled to first get his raw flour, either by grinding or purchase, and then by a separate milling process and by separate machinery (practically the same as that used by these respondents) turn it into self-rising flour. The "miller" who grinds his own flour has no advantage thereby, for he must absorb the local crop of wheat, which may or may not be good, whereas the so-called "blender" can buy the best flour wherever it is produced, and can buy such flour at actual cost. The explanation of this is that by selling their surplus at actual cost the wheat-grinding millers from whom he purchases are enabled to keep their mills going night and day, thus greatly reducing cost.

3. Respondents aver that there is no "middleman's profit" involved unless the self-rising flour which has been manufactured, as aforesaid, in the same way by both "miller" and "blender" is sold through a jobber, and where this is not done and where the sale is made

direct to the retailer middleman's profits on self-rising flour are in fact eliminated.

4. Respondents further aver that the so-called "miller" has no advantage as to cost of manufacture, for it costs him as much, or practically as much, to manufacture his raw flour as it does for respondents to buy their raw flour, which they obtain very cheaply for the reason hereinbefore stated. The production of self-rising flour is, as aforesaid, a separate milling process, as to which the so-called "miller" has no advantage, but is rather at a disadvantage.

5. Respondents further deny that said practices constitute unfair methods of competition with millers and manufacturers of flour alleged to be engaged in interstate commerce who grind the flour they offer for sale alone, or mixed as self-rising flour, and with the producers of self-rising flour alleged to be engaged in interstate commerce who do not represent themselves to be millers or manufacturers of flour, as alleged in the complaint.

Respondents further deny that they are in competition with any sellers of raw or plain flour, and deny that they claim to be manufacturers of plain flour, and deny that their customers believe them to be engaged in the manufacture and sale of plain flour.

6. Respondents deny that they have made any false representations to the injury of said millers" and producers of self-rising flour, and that they have taken away their business by false representations, as alleged in the complaint.

7. Respondents deny that said acts and practices alleged to have been committed by respondents are all to the prejudice of the public and constitute unfair methods of competition within the meaning of the Federal Trade Commission Act, and aver on the contrary that this proceeding, which is in fact (although not intentionally) in the interest of a few private individuals, is to the injury of the public, and not within the spirit or letter of the Act.

Answering the Whole Complaint, respondents, in addition to the defenses hereinbefore set out, for further defense say:

1. Respondents deny that complainant, the Federal Trade Commission, has jurisdiction of this proceeding.

2. Respondents deny that this proceeding falls within or is covered by the said Act of Congress creating the Federal Trade Commission.

3. Respondents deny that this is a proceeding in the interest of the public, and insist that the practices de-

scribed in the complaint do not substantially tend to affect the public to its injury.

4. Respondents insist that this proceeding, so far from being in the interest of the consuming public, is in fact (although not intentionally) in the interest of a few private individuals, competitors of respondents; that the effect of sustaining this proceeding will be to injure respondents, and make their competition less effective, in that they will be charged by said competitors with fraudulent and willfully unfair practices; and that the effect of so reducing the competitive power of respondents will be to ultimately raise the price to the consuming public to its injury.

5. Respondents further state that the use by them of the word "Mills" has been and is in good faith and under claim of lawful right, and is justified by the strictest interpretation of the term, in that respondents, as part of their business, are engaged in grinding feed, as aforesaid; that no fraud or deceit of any kind has been practiced on the public (none being charged in the complaint); that there has been no substitution by respondents of an inferior for a superior article to the injury and deception of the consuming public; that the wheat "miller" does not manufacture self-rising flour by the use of his grinding mill, but by the same process as that used by respondents manufactures the same self-rising flour, which is in no wise superior to the product of respondents, but which is more apt to be inferior.

6. Respondents are without knowledge of any producers of self-rising flour (so-called "blenders") who claim to have been injured in competing with respondents by the use of the word "Mills," and deny that any persons claiming to be so injured are their competitors, but allege on the contrary that the competitors who are objecting to the use of said word by respondents are individuals, firms, or corporations owning wheat-grinding mills, but also engaged in the manufacture and sale of self-rising flour in competition with respondents.

With respect to such competitors, respondents insist that they follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors, who are themselves

engaged in the same practices condemned by the complaint.

7. Respondents aver that their sales are made to customers who are familiar with their methods, and that none of their customers are in fact deceived or misled into thinking that they operate a wheat-grinding mill; and respondents aver that it would not be to their advantage if they did think so, because better self-rising flour can be made by the so-called "blender." The "miller" is to a large extent dependent on the local crop, but respondents can buy wherever the crop is best.

8. Respondents deny that they have represented, or led their customers or the public to believe, that middleman's profits are excluded, etc., as alleged in the complaint. This charge is a mere unwarranted inference or conclusion, without facts alleged to support it.

9. Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission after a full hearing, in October 1916 handed down an opinion, which remains of record, denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors.

10. Respondents for further defense submit that the complainant Federal Trade Commission, after **ex parte** investigation, has prejudged this case on questions of fact which are of vital, if not controlling importance, in that its authorized agent, acting in its behalf, has in writing stated that said Commission was of the opinion that respondents are not engaged in a manufacturing or milling process.

Respondents do not charge any bad faith, or intentional unfairness, on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law, in this proceeding.

And respondents further submit that if the Federal Trade Commission Act is to be construed as authorizing such procedure, such portion of said Act contravenes the Fifth Amendment to the Constitution of the United States, in that the Federal Trade Commission is not only undertaking to act at the same time as litigant and judge —which is contrary to the fundamental maxim that no man shall be a judge in his own case—but its findings of fact, although erroneous and contrary to the weight of the evidence, are conclusive if supported by any material evidence, and for this reason a full review of its action by an impartial tribunal is denied, and litigants are thereby deprived of their property without due process of law.

11. Respondents further aver that they have no wish, and have never had any wish or intention, to use unfair methods in competition, and have never used the word "Mills," or any other word mentioned in the complaint, with any intent to deceive or make false representations of any kind, being advised on the contrary that said word is truthful and fully authorized under the facts hereinbefore set out; and respondents submit that they should not be required to give up the trade name under which a valuable good will has been acquired; that this would inflict an unnecessary loss and hardship on respondents, and would in no wise benefit the public.

12. Respondents further state that they and other Nashville manufacturers of self-rising and processed flour supply a trade which is accustomed to buy in small quantities, and such service is an economic necessity in said territory, and is in the interest of dealers and of the consuming public, and enables consumers to obtain these products at a lower price than would be possible if such service were withdrawn or discontinued.

Respondents further aver that all self-rising and processed flour is of the same general type, whether manufactured by the so-called "millers" or the so-called "blenders," and that competition between them can only be determined, and is in fact determined, by three factors, to-wit, price, quality, and service. The grinding of flour in a particular mill is not, and cannot be, a factor.

Wherefore, respondents having fully answered, pray that said complainant be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 1012 Nashville Trust Building,
Nashville, Tennessee.

AMENDED COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes." the Federal Trade Commission charges that E. C. Faircloth, Sr., E. C. Faircloth, Jr., F. B. Evers and the Estate of C. K Evers, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

Paragraph One: The respondents are members of a partnership which is engaged in the City of Nashville, State of Tennessee, in the business of purchasing various lots and grades of wheat flour from flour mills located in various States of the Middlewest, which they cause to be transported to their place of business in the City of Nashville and there blending and mixing the flours so purchased by them and putting up in sacks and offering for sale and selling the mixtures or blends resulting therefrom, in some cases adding leavening agents such as baking powder to the blends or mixtures producing the commodity known to the public and in the trade as "Self-Rising Flour" In the course of their business as aforesaid the respondents solicit orders for their products from dealer in various States other than Tennessee and contract to sell and deliver and do sell and cause to be transported to purchasers outside of the State of Tennessee their products as above described. Respondents in said business are in competition with individuals, partnerships and corporations likewise engaged in the business of selling wheat flour, either in plain or self-rising form, in interstate commerce who either manufacture the flour they sell by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour, or purchase the flour they offer for sale, either as plain or self-rising, and do not in their trade names or otherwise in the conduct of their business use the terms "Mill," "Mills," "Millers," or "Milling," or otherwise represent that they are engaged in the manufacture of flour as above-described. Respondents in carrying on their business as aforesaid solicit orders and sell their products largely to retail grocers through the mail service.

Paragraph Two: Respondents also operate a plant for the conduct of the same character of business as above

described in the City of Birmingham, Alabama, and conduct the sale of their products at said plant under the names of Cherokee Mills and Alabama Flour Company.

Paragraph Three: Respondents in the course and conduct of their business as aforesaid operate under the name Cherokee Mills. Respondents solicit orders and sell their products under such name. On their letterheads and in their correspondence appears such statements as the following:

"Cherokee Mills
Capital $500,000
Quality Flours."

On the letterheads also appears a picture of extensive buildings with large advertising signs across them reading: "Cherokee Mills—High Grade Flour." In some of their form letters circulated in the course of their business as aforesaid respondents represent: "Daily Capacity 2000 barrels," "Tip-Top Finest Patent Plain Flour." In their letter and circulars soliciting orders respondents make other representations implying that they are manufacturers of flour as above described, that is, that they grind the wheat into the flour which they sell. Respondents' products are sold under a number of brands and are packed and delivered in cotton or other bags on which are stamped in conspicuous letters the name "Cherokee Mills" and such description as "Fancy Patent," "High Patent Flour," "Finest Patent," etc.

Paragraph Four: Respondents do not own or operate any mill or machinery, other than devices for blending or mixing lots and grades of flour purchased from millers as above described and adding leavening agents. They manufacture no flour by rolling or grinding or process of crushing wheat and extracting therefrom the product known as flour, and own or operate no mill or machinery fitted for that purpose.

Paragraph Five: The use by respondents of the name "Cherokee Mills" in their business and the representations in their business correspondence and otherwise as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flours to believe that in purchasing their products they are buying direct from a miller or manufacturer of flour as above described and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of their flour by dealers and consumers on that understanding and belief; and said

representations constitute unfair method of competition with millers or manufacturers of flour likewise engaged in interstate commerce who make, as above described, the flour they offer for sale and with sellers of flour likewise engaged in interstate commerce who do not so manufacture but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondents are false and misleading and tend to take away their business.

Wherefore, said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore the Premises Considered, the Federal Trade Commission on this 4th day of September, A. D. 1929, now here issues its amended complaint against the respondents.

NOTICE.

Notice is hereby given you, E. C. Faircloth, Sr., E. C. Faircloth, Jr., F. B. Evers and Estate of C. K. Evers, Co-partners doing business under the name Cherokee Mills, respondents herein, that the 4th day of October, A D., 1929, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required on or before said date, to file with the Commission an answer to the complaint. If answer is filed appearance on that date will not be required and the hearing on the charges will be postponed to a later date, due notice of which will be given. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule III) provide as follows:

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the com-

plaint) file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegations of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to appear to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 4th day of September, A. D. 1929.

By the Commission.

(Seal)

Otis B. Johnson,
Secretary.

ANSWER TO AMENDED COMPLAINT—Filed Oct. 3, 1929.

The Joint and Separate Answer of E. C. Faircloth, Jr., F. B. Evers, and Estate of C. K. Evers, to the Amended Complaint in this cause filed against them.

Respondents for answer say:

1. It is admitted that there is a partnership doing business in Nashville, Tennessee, under the name and style of Cherokee Mills. This business was started in 1910, under the name of Cherokee Mills, by E. C. Faircloth, Sr., and C. K. Evers, both of whom are now dead. Said business has been carried on since said date, the present members of the partnership being Estate of E. C. Faircloth, Sr., Estate of C. K. Evers, E. C. Faircloth, Jr., F. W. Faircloth, and F. B. Evers.

It is admitted that said partnership has been and is engaged in the manufacture of self-rising and processed flour, but it is denied that said business and the process of manufacturing said products are correctly described in the complaint.

In addition to the manufacture of self-rising and processed flour, said partnership since 1925 has owned and operated a grinding plant for the manufacture of stock feed.

2. It is admitted that respondents contract to sell, and sell and deliver their products outside the State of Tennessee.

3. Respondents admit that they are in competition with others, in making and distributing said products, but they are without knowledge as to whether said competitors are individuals, partnerships, or corporations, or as to whether they are engaged in Interstate Commerce, or as to whether they manufacture the flour sold by grinding or crushing wheat, or as to whether they purchase the flour they offer for sale, or do not, in their trade names, or otherwise, use the term "Mill," "Miller," or "Milling," or otherwise represent that they are engaged in the manufacture of flour, etc., as alleged in the complaint.

4. Respondents deny that they solicit orders and sell their products principally to retail grocers through the mail service.

5. Respondents deny that those of their competitors who are so-called "millers" grind all the self-rising flour which they sell in competition with respondents, and on the contrary aver that said competitors, to a greater or less extent, buy flour from others, which they make

into self-rising flour by the same methods used by respondents, and put out this product in their own bags, and under their own brands; and respondents aver that the same is true with respect to "processed" flour.

6. Respondents admit that they operate a plant of the same character in the City of Birmingham, Alabama, and conduct the sale of their products at said plant under the names of "Cherokee Mills" and "Alabama Flour Company."

7. Respondents deny that the letter-heads, bags, and advertising matter, and statements herein appearing, are correctly described in the complaint.

8. Respondents admit that the words "Mills" and "Milling" are used by them in connection with letter-heads, advertising matter, and bags in the conduct of their business, but respondents, although entitled to so describe themselves, do not in fact use the term "Manufacturers."

9. Respondents deny that in their letters and circulars soliciting orders they make use of representations implying that they are grinders of wheat.

10. Respondents deny that they own or operate no mill or machinery other than certain mixing devices, etc., and aver that they own machinery adapted to the manufacture of self-rising and processed flour, which is both a milling and manufacturing operation, and also machinery adapted to the grinding and manufacturing operation, and also machinery adapted to the grinding and manufacture of stock feed, the value of respondents' plants being approximately $....., and of their machinery and equipment approximately $....., and of their investment, capital, etc., approximately $..... .....; or a total investment of approximately $..... ..... Respondents' Nashville plant has a capacity of about ..... barrels a day, on a twenty-four-hour basis, and their Birmingham, Alabama, plant has approximately a capacity of ..... barrels. In 1928 respondents did a business of approximately $.....

It is true that respondents grind no wheat or other cereals adapted for human consumption, but it is also true that respondents operate a grinding mill for the manufacture of feed for cattle, as hereinbefore set out.

11. Respondents deny that the use of the aforesaid trade names with the words "Mills" or "Milling," separately or in combination with the term "Manufacturer," or any other statements on respondent's letter-heads, bags, etc., has any tendency to make dealers or prospec-

tive customers or consumers believe that they are buying flour from a miller and manufacturer without a middleman's profits, etc., as claimed in the complaint.

12. Respondents deny that any false representations are thereby made, and deny that these alleged practices, if proven, constitute any unfair competition with millers and makers of self-rising flour, or processed flour, alleged to be likewise engaged in Interstate Commerce, etc.

13. Respondents deny that said alleged actions have the effect of taking away business improperly from said alleged competitors, and on the contrary aver that said conduct, if proven, could have no such possible effect:

(a) Because the so-called "Millers" do not and cannot make self-rising flour with their grinding mills, but must first obtain raw flour, either by grinding it, or by purchasing the same, and then turn it into self-rising flour.

(b) Because said "Millers" obtain no advantage from making self-rising flour from the flour which they grind, but are rather at a disadvantage, both as to cost of production of the raw flour, and as to its quality, as will be shown at the hearing.

(c) Because self-rising and processed flour, no matter by whom made or sold, is essentially the same product destined for consumption in a particular region, and the buyers of such flour are governed by only three factors, to-wit; price, quality, and service.

(d) Because there is no pretense in the complaint that self-rising or processed flour made by the so-called "miller" is any better than that manufactured by the so-called "blender," and there is no deception of the public by substituting an inferior for a superior article.

14. Respondents aver that those of their competitors who are "Millers" follow the same practices characterized in the complaint as "unfair," in that they buy flour, turn it into self-rising or processed flour by the manufacturing process hereinbefore mentioned, and put it out under their own brands and in their own bags.

Respondents are advised that the Federal Trade Commission has no duty or power to act in the interest and for the protection of competitors who are themselves engaged, as against respondents, in the same practices condemned by the complaint.

15. Respondents deny, as hereinbefore set out, that the use of the words "Mills," "Milling," or "Manufacturer," misleads, or has a tendency to mislead, any substantial portion of the purchasing or consuming public,

in that they may be led to believe they are buying from one who grinds his wheat. As hereinbefore set out, respondents some six years ago installed grinding machinery for the manufacture of feed stuffs, which is now a considerable percentage of their business, and with respect to this product they feel that there can be no doubt of their right to use the name "Cherokee Mills."

As to other flour products, while believing and insisting that they are both "Millers" and "Manufacturers," respondents are nevertheless willing to mark on every bag, in conspicuous lettering, the words "Packed by" Cherokee Mills. Respondents have heretofore made said offer, and hereby repeat it, being willing to cut off all possibility of deceiving or misleading any purchaser or customers through the use of the words "Mills", "Milling," etc. Respondents do not claim to be grinders of wheat, and do not wish to hold themselves out as such, and believe that by the terms of their offer any possibility of misleading on the part of customers or consumers would be cut off.

16. Respondents, under the trade names aforesaid, have acquired a valuable good will, and they insist that it would be unjust and inequitable to deprive them of this.

Respondents aver that in 1916 certain interested persons, operating wheat-grinding mills and manufacturing self-rising flour, in competition with the Nashville manufacturers of self-rising flour, instituted proceedings before the Interstate Commerce Commission to take away the "milling in transit" privilege enjoyed by such Nashville manufacturers, insisting that they were not engaged in a "milling" operation.

The Interstate Commerce Commission, after a full hearing, October, 1916, handed down an opinion, which remains of record, refusing and denying the contentions of the so-called "millers," and upholding the "milling in transit" privileges of said Nashville manufacturers.

Respondents submit that after this decision by another Federal Tribunal that makers of self-rising flour were engaged in a "milling" and "manufacturing" process, and in view of the lapse of time since said decision, it would be unjust and inequitable to sustain the present proceeding in the interest of these same competitors, thereby depriving respondents of the valuable good will which they have built up.

17. Respondents deny that this proceeding is in the interest of the public, as claimed in the complaint, and al-

lege on the contrary that said proceeding is actually (though not intentionally) in the interest of a few private individuals, competitors of the so-called "blenders," and that its tendency and effect, if sustained, will be to injure and exploit the consuming public for the benefit of private individuals. Respondents insist that the practices described in the complaint do not substantially tend to affect the public to its injury; deny that this proceeding falls within or is covered by the Act of Congress creating the Federal Trade Commission; and deny that the complainant, Federal Trade Commission, has jurisdiction of this proceeding.

18. Respondents submit that Section 5 of the Federal Trade Commission Act, and the procedure thereunder, violate the Fifth Amendment to the Constitution of the United States, in that said Federal Trade Commission is not and cannot be impartial, since it acts both as plaintiff and judge in the same proceeding, and because its findings, however erroneous, and however opposed to the weight of evidence, are binding and conclusive on review if supported by any material evidence, and thus a full review by an impartial tribunal is denied, and the litigants before said Commission are thereby deprived of due process of law.

Respondents further submit that the Complainant, Federal Trade Commission, after ex parte investigation, has prejudged this case on questions of fact, which are of vital, if not controlling importance.

Respondents do not charge any bad faith, or intentional unfairness, on the part of the Commission, but submit that such procedure is in contravention of the Fifth Amendment to the Constitution of the United States, and that these respondents are thereby denied due process of law in this proceeding.

And now having fully answered, respondents pray that said complaint be dismissed.

Thomas H. Malone,
Counsel for Respondents,
Suite 10, 12 Nashville
Trust Building,
Nashville, Tennessee.

United States of America

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of October, A. D., 1929.

Commissioners:
Edgar A. McCulloch, Chairman,
Garland S. Ferguson, Jr.,
C. W. Hunt,
William E. Humphrey,
Charles H. March.

In the Matters of	
Royal Milling Co., et al.,	Docket No. 1597
Tennessee Grain Co.,	Docket No. 1598
Nashville Roller Mills,	Docket No. 1599
Snell Milling Co.,	Docket No. 1600
Watauga Milling Co., et al.,	Docket No. 1601
State Milling Co., et al.,	Docket No. 1602
Cherokee Mills., et al.	Docket No. 1604

ORDER.

The above-entitled matters coming on for consideration by the Commission on the suggested solutions of the issues raised in the complaints filed July 12, 1929 by Thomas H. Malone, counsel for respondents, and the Commission now being fully advised in the premises,

It Is Ordered that said suggested solutions be considered at that time of final argument on the merits.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

STIPULATION OF COUNSEL.

In the above styled matter it is stipulated and agreed between Baldwin B. Bane, Esq., counsel for Federal Trade Commission, and Thomas H. Malone, Esq., counsel for respondents, and subject to the approval of the Federal Trade Commission:

I. That all evidence taken in the case of Francis J. McCarthy, doing business under the names of Watauga Milling Company, etc., (Docket No. 1601), may be considered as part of the evidence herein.

II. That the matters hereinafter covered by further stipulation in this cause may be considered in said cause of Francis J. McCarthy, doing business, etc., (Docket No. 1601), so far as they may be material to the general issues raised by the pleadings.

III. That in addition to the evidence in said cause (Docket No. 1601 the following additional facts are stipulated with reference to this cause:

1. That said business was begun under the name of "Cherokee Mills," in Nashville, Tennessee, in 1910, by E. C. Faircloth, Sr., and C. K. Evers, both of whom are now dead; that the present members of said partnership are Estate of E. C. Faircloth, Sr., Estate of C. K. Evers, E. C. Faircloth, Jr., F. W. Faircloth, and F. B. Evers. E. C. Faircloth, Sr., died March 13, 1929.

2. That said partnership conducts its business in a plant in Nashville, Tennessee, and also a branch in Birmingham, Alabama, which also operates under the name "Cherokee Mills." This Birmingham branch was established in the year 1922.

3. That said partnership is engaged in making "self-rising" flour, and also what is described in the testimony of respondent Francis J. McCarthy (Docket No. 1601), as "processed " flour—said operations being conducted along the same line and by machinery of the same type as that employed and used by the respondent Francis J. McCarthy.

4. That said partnership, in addition to the operations described in the foregoing paragraph, is also engaged in making mixed feed for cattle or other animals, and not for human consumption. That said "mixed feed" is produced by the grinding of wheat, corn, together with other elements, such as hay, alfalfa, etc. The making of this "mixed feed" is carried on by separate and different machinery from that used in the production of "self-rising" and "processed" flour, the feed

manufacturing unit and the grinding machinery therefor being a separate part of the general plant.

5. That exhibit 21 of this stipulation shows the exterior view of the Nashville plant, and exhibit 22 the exterior view of the Birmingham plant. That exhibits 23, 24 and 25 show interior views of the Nashville plant. That exhibit 26 shows an interior view of the Birmingham plant. That exhibit 27 shows the grinding machinery of the feed manufacturing unit of the Nashville plant, and exhibit 28 shows the packing and mixing machinery of said "mixed feed" unit.

6. That exhibits 1 to 13 inclusive show letters written by the Cherokee Mills, and sent out to customers, or prospective customers, under the dates shown by the respective exhibits.

7. That exhibits 14 to 20 inclusive, to this stipulation, shows the bags, or sacks, brands, etc., used by said "Cherokee Mills" in carrying on its flour business.

8. That said partnership also markets certain brands of flour produced in its Nashville plant under the trade name "Tennessee Flour Company."

9. That the brands put out by said partnership from the "Cherokee Mills" are as follows:

"Tip-top," described as "Finest Patent Flour."
"Tip-top"—"Superlative Self-rising Flour."
"Welcome"—"Superlative Self-rising."
"Cherokee Chief"—"High Patent Plain."
"Reddy-to-Bake"—"High grade Self-rising."
"Blue Diamond"—"Choice Patent Plain."
"Blue Bonnet"—"Finest Self-rising."

10. That the brands put out under the trade name "Tennessee Flour Company" are as follows:

"Challenge"—"Fancy Patent Plain Flour."
"Banner"—"Straight Grade Plain Flour."
"Reddy-to-Bake"—"Choice Patent Self-rising."
"Ditto"—"A repeater Self-rising."

11. That said partnership, in carrying on its business, buys and sells in Interstate Commerce.

12. That of the flour which goes through the processes already described in its plant, and is afterwards sold to the trade, approximately 60% is "self-rising," and approximately 40% is "processed."

13. That said partnership travels approximately fifteen salesmen, and solicits orders from and sells its prod-

ucts almost exclusively to retail merchants. This solicitation is accomplished both through the traveling salesmen and by mail. Business is not solicited from wholesalers.

14. That the total sales made by said partnership in the year 1929, from the plant in Nashville and the branch in Birmingham, together amounted to $1,189,998.92.

15. That the book value of the plant (in Nashville and Birmingham together) amounts to $118,451.00, and the replacement value amounts to $250,000.00. That the "mixed feed" unit of the Nashville plant has been in operation for six years, and that about 12½% of the total business is "mixed feed."

16. That on the ——— day of February, 1929, a letter was written to said partnership on the stationery of the Federal Trade Commission, signed by Web Woodfill, Chief Trial Examiner, enclosing a copy of a proposed stipulation—said letter and stipulation being in all respects similar to the documents, respondents' exhibits for identification 71 and 72 in Docket No. 1601. The objections, ruling of the Examiner, and exceptions made with reference to the offer of respondents' exhibit for identification 71 and 72 in Docket 1601, R. p. 1066, et seq, are to apply also in this cause.

17. That a proposed solution of the controversy between these respondents and the Commission was offered under date of July 12, 1929,—said proposed solution and the Commission's reservation of action thereon being as shown in the testimony of the witness, Vernon S. Tupper, in Docket No. 1601, pages 1071 and 1072 of the record in said cause.

IV. That the Federal Trade Commission wrote these respondents, and also the respondents in Docket 1597 (Royal Milling Company), Docket 1598 (Tennessee Grain Co. and Tennessee Milling Co.), Docket 1599 (Nashville Roller Mills), Docket 1600 (Snell Milling Co.), Docket 1601 (Watauga Milling Co.), Docket 1602 (State Milling Co.), Docket 1607 (Old Hickory Mills), Docket 1617 (Southern Milling Co.), and also Mero Mills, (which, it is stipulated, is the same Mero Mills mentioned in the testimony of the witness Thomas E. Snell in Docket 1601 at pages 934, et seq, of the record), a letter similar in form to respondents' exhibit 68, as shown in the testimony of the witness Vernon S. Tupper in Docket No. 1601, at page 1039 of the record, requesting from each a list of twenty-five customers; that nine of the above named concerns complied with said request; and that from the names so furnished the Federal Trade Commission obtained the

twenty-five merchants or dealers, who were examined in chief on behalf of the Commission in said cause, Docket No. 1601, with the exception of the following two witnesses—Walter Cunningham and C. S. Ragland.

V. That to prevent the expense, delay and trouble incident to a separate trial of this cause, the same may be heard and determined by the Commission in connection with said cause of Francis J. McCarthy, doing business, etc., Docket No. 1601,—it being agreed that the evidence introduced in said cause (Docket No. 1601) may be looked to by either party as if taken in this cause, and with respect to these respondents, except in so far as changed by this sipulation, and that the record therein shall consitute part of this record.

Thomas H. Malone,
for Respondents.
Baldwin B. Bane.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D., 1931.

Commissioner:

C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of E. C. Faircloth, Sr., E. C. Faircloth, Jr., F. B. Evers and Estate of C. K. Evers co-partners doing business under the name Cherokee Mills, and individually.	Docket No. 1604

FINDINGS AS TO THE FACTS AND CONCLUSION.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served an amended complaint upon the respondents above named charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearances and having filed their answer herein, a stipulation as to the facts was entered into between counsel for the respondents and counsel for the Commission in which it was stipulated and agreed that the Federal Trade Commission should take such stipulation as to the facts in lieu of testimony.

Thereupon this proceeding came on for decision by the Commission on the briefs submitted by counsel for the Commission and counsel for the respondents and argument by counsel for the Commission and counsel for the respondents, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

Findings as to the Facts and Conclusion

Paragraph One: Respondents, E. C. Faircloth, Jr., F. B. Evers, Estate of C. K. Evers and Estate of E. C. Faircloth, Sr., are members of a partnership which conducts business under the names Cherokee Mills and Tennessee Flour Company. The business of this partnership was begun under the name of Cherokee Mills in 1910 by E. C. Faircloth Sr. and C. K. Evers. E. C. Faircloth Sr. died March 13, 1929. Respondents' principal place of business is located in Nashville, Tennessee but they also operate a branch in Birmingham, Alabama which was established in 1922. Respondents are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours, in some instances adding phosphate and in other instances adding salt, soda, and phosphate, which makes the flour ready for use without the addition of baking powder, and thus gives to it the name of self-rising flour. They then pack the flour in bags under brands of their respective names and sell it to dealers located in various states of the United States, but particularly in the Southeastern States. Respondents buy flour from concerns grinding wheat into flour and located at various points throughout the United States. This flour is shipped to them at Nashville, Tennessee or Birmingham, Alabama, from which points they ship the flour to their customers. In the course and conduct of their aforesaid business respondents are in competition with other co-partnerships, corporations and individuals engaged in the sale of flour in interstate commerce. In addition to the above described business respondents on a much smaller scale and in a much smaller way are also engaged in making a mixed feed for cattle or other animals but not for human consumption. Respondents produce this mixed feed by the grinding together of wheat, corn, hay, alfalfa, etc. The making of this mixed feed is carried on by separate and different machinery from that used in the mixing of the flour, the unit for the making of this mixed feed being a separate part of the general plant. This mixed feed unit of the Nashville plant has been in operation for about six years.

Paragraph Two: Respondents put the flour which they buy from concerns located at various points throughout the United States in what is called a batch mixer, where it is stirred up and mixed together. Usually but not always two or more flours are so mixed or stirred up together. If the flour is to be self-rising there is added in this mixer the correct proportions of salt, soda and phosphate. If it is not to be self-rising a little phosphate

is added in the mixer. The flour is then run from this batch mixer into bins, from which it goes to a draver feeder which feeds the flour into elevator cups, which carry it to the reel or sifter, from whence it goes after being sifted into hopper bins, and thence to the packer where it is packed into bags of the desired sizes. There is no grinding process in the operation. Respondents sell from 4 to 7 brands of flour under each of the names they use, but each brand does not represent a different grade or quality of flour. It takes from 10 to 15 minutes to run the flour through the equipment used by respondents. The cost of the machinery in such a plant as the respondents', having a capacity of 3,000 barrels a day on a 24 hour run, is approximately $20,000 to $25,000, and the total investment approximately $150,000 to $200,000. The replacement value of respondents' plants is approximately $250,000.

Paragraph Three: The grinding of wheat into flour has developed by various steps until today it has become a refined, complex, and scientific process. Roughly, the operations which constitute the process are: (1) cleaning and otherwise preparing the grain for grinding; (2) the grinding or reduction of the grain; (3) the bolting or sifting operation; (4) purification and preparation of the product by blowing air through it, adding phosphate, bleaching agents, etc. The modern method of grinding wheat substitutes for the single grinding between millstones a succession of grindings between several sets of iron or porcelain rollers. The wheat when received at the mill is unloaded into elevators or bins, and is thoroughly screened and dry cleaned and scoured by machines especially adapted for that purpose. This process itself is quite complicated, requiring a great deal of machinery. The wheat is analyzed and graded and then tempered and conditioned, preparatory to being ground. It is then passed through the rollers, each passage through a pair of rollers being called a break, and different concerns using different numbers of breaks. After each break the product is sifted or bolted, and the results of the siftings go into various streams, which are carried to other sets of rollers where they are again crushed or broken, the process being a continuous operation. A five break mill has eighteen spans of rolls and thirty-two separations. Each break effects a mechanical separation. The bolting or sifting separates the results of the breaks into various streams and products, such as flour, middlings, offals, bran, shorts, etc. The bolting or

sifting machine is commonly referred to as a reel. After the flour has gone through the rolls it is again bolted or sifted, and then sent to the packing room. The flour is milled to definite standards in order to insure uniformity. The wheats for the various brands of flour made by the mill are selected by the chemist and the superintendent from reports which are on file in the superintendent's and chemist's offices, showing the characteristics and chemical constituents of the wheats. Concerns grinding wheat into flour are known as "Manufacturers of Flour." Bolting or sifting has been done by the concerns grinding the wheat into flour in this country from the earliest times. The number of boltings or siftings differs in different mills, and is of importance in determining the appearance of the flour. Bolting or sifting is but a part of the process of preparing the flour. Concerns grinding wheat into flour bleach the flour, the bleaching agent being added on the mill stream. This bleaching matures or ages the flour, thus improving its baking qualities, and whitens it. Concerns grinding wheat into flour blend flours by a blending of the wheats after a chemical analysis of such wheats, and by blending the various streams of flour produced by the different breakings of the wheat berry between the various rolls in the mill. Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics, such as gluten content, protein content, moisture content, ash content, etc., in order to keep each of the brands of flour put out by such concerns uniform. It is only from chemical tests that such contents of the flour can be determined and the uniformity of each brand maintained. These characteristics determine the grade and quality of the flour. Unless these characteristics of the flour are maintained practically uniform in each brand of flour, the flour cannot be kept up to one standard. Concerns grinding wheat into flour are very jealous of their grades and brands, and guard and protect them with great care. All mills in the process of grinding the wheat and preparing the flour make or produce several grades of flour. These are, in the order of the best and highest priced grades; patent flour, which means that part of the stream of flour which is left after taking off a greater or less percent of the inferior flour—it is the best flour made by the mill; straight flour, which means one hundred percent flour, all the flour that is extracted from the wheat berry; clear

flour is the flour taken off by the mill after the patent flour has been removed; low grade flour designates all of the lowest grades made by the particular mill. These terms indicate with different mills' flours of widely different qualities. The cost of the machinery for a concern grinding wheat into flour with a capacity of about 3,000 barrels a day is about $600,000, and the total investment between $1,000,000 and $1,500,000. The time required for preparing the wheat and producing the flour by such a concern is from eight hours to fifty or sixty hours, due to differences in time required for tempering the wheat. But if the tempering time is excluded, the time required is from a half hour to one and a half hours, depending upon the number of breaks and boltings used by the concern.

Paragraph Four: Practically all concerns grinding wheat into flour add phosphate to the flour on the mill stream, that is, as the flour is run through the mill. This addition is for the purpose of whitening the baked product and counteracting an overdose of soda. Self-rising flour is flour to which there has been added in correct proportions salt, soda, and phosphate, so that the flour is ready for use without the addition of baking powder by the cook. It is particularly adapted to the making of biscuits. A formula for mixing self-rising flour was discovered by Professor Liebig about seventy-five years ago. The self-rising flour business was originated or begun in Nashville, Tennessee, by a Dr. Owsley. He operated under the name Owsley Flour Company and sold through the Southeastern States. This company was succeeded by the Ford Flour Company about 1897, which concern is still in existence and selling self-rising and plain or phosphated flour throughout the South. The concerns originating the mixing of self-rising flour in Nashville and not grinding wheat into flour did not call themselves mills or milling companies, or manufacturers of flour. Most of those actually grinding wheat into flour and selling in the Southeastern States mix and sell self-rising flour, and such is usually produced directly from the mill stream—that is, by running the mill stream directly into mixers where the self-rising ingredients are added before the flour is finally bolted and packed. Respondents sell in competition with those actually grinding wheat into flour, and in competition with those engaged in the same character of business as respondents and who do not represent themselves as mills or milling companies, or manufacturers of flour.

Findings as to the Facts and Conclusion

Paragraph Five: Nashville, Tennessee, is the center of the flour industry in the South. There are several concerns located there grinding wheat into flour, and other concerns used to be located there that ground wheat into flour. There are approximately 170 concerns actually grinding wheat into flour and selling in the Southeastern territory.

Paragraph Six: Respondents do not have or maintain a laboratory for testing or analyzing the flours which they buy or sell. They use regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it. By this test the characteristics or qualities of the flours, such as gluten content, protein content, moisture content, starch content, etc., cannot be determined. Only the relative appearance of the two flours can be gotten from such a test, and this is of little value in approximating even the grade of the flour, because practically all concerns grinding wheat into flour add phosphate and a bleaching agent to the flour on the mill stream. Different concerns add different amounts of such, and a greater amount of bleaching makes a lower grade of flour appear better. Practically no two concerns grinding wheat into flour grind exactly alike. Some granulate the flour finer than others, and some add a larger proportion of the total break of the wheat berry to their various grades of flour than do others. A difference in the granulation of the flour and in the amount of the total break of the wheat berry contained in the flour affects very materially the appearance of the flour. The quality and characteristics of the flour cannot be determined by the paddle test, and respondents by this test cannot maintain uniformity of brands or grades. The grade and quality of all flours are determined by their chemical analysis. The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondents' plant. From time immemorial there have been plants buying and blending flour but not grinding wheat into flour, which plants were known as blending plants and not called or known as mills or milling companies, or manufacturers of flour. Such terms have from time immemorial been applied in the flour trade only to the grinding of the grain.

Paragraph Seven: Respondents represent themselves as "Cherokee Mills. Quality Flour. Daily Capacity 2,000 barrels;" "The Tennessee Flour Company. Quality Flours. Daily Capacity 1,000 barrels." In the letters,

circulars and literature which respondents circulate among the trade in their efforts to sell flour they make such statements as the following:

> "In the Southwest the growing wheat is coming along nicely and they have prospects of the biggest yield in recent years but this is offset by late planting and consequent lowered conditions to the north, and the Southwest crop is entering now upon a period that is most dangerous to its welfare, and being perfect at the present, its future course, if it changes at all, must be downward.
>
> "As to the soft red wheat there is little to be had and while we favor the market for May only, it may be that wheat will grow steadily stronger until the new crop is harvested, which will be some time in July."

And:

> "The wheat market during the past week having remained practically stationary we are not making a change in our flour prices today, but we continue to lean to the belief that an advance of considerable proportion will take place during this month of May, and that you are absolutely safe in buying your flour requirements as far ahead as June 1st."

And:

> "Wheat is up still more since we quoted you last Saturday, and we note that a number of mills have still further advanced their flour prices, but we propose to stick to our present levels just as long as we possibly can. However, at the rate we are shipping out 'Tip-Top' and our other brands our stocks will speedily diminish. One of the largest millers in the United States was in our office today, and in talking of general conditions the writer asked him his opinion on the soft red wheat for the remainder of this crop, and we are pleased to say that his idea coincided with ours in that he looks for another 10c per bushel at least between now and June, which would be in round numbers 50c per barrel on flour above our present price."

And:

> "Please remember that in our flours you are getting an entirely soft red wheat article, perfectly uni-

form and absolutely guaranteed, and again we caution you to look out for the numerous brands being shipped into the Southeast that are milled from hybrid wheats, and which will not give satisfaction to housewives accustomed to soft flour."

And:

"We have not been, nor will we be from present indications, friendly to stronger prices on wheat as a whole, but we do believe that soft red wheat is good property, and will be at any time during the remainder of this crop year. We have accumulated considerable supplies and are able to offer entirely soft red flour in all our grades, and the prices that we quote do not nearly reflect replacement costs."

And:

"Soft wheat continues to climb, and even at the price it is bringing now there is little to be had. We therefore consider ourselves fortunate indeed in that we have protected our requirements for the spring months and can guarantee delivery of an entirely soft wheat flour in all our grades.

"There are a number of flours being offered to the southern trade at this time that are made entirely from semi-hard or low protein wheat, and while these can be had at a considerably discount we doubt that it is wise to buy them for they will not give satisfaction where housewives are accustomed to soft red wheat flour."

Paragraph Eight: The containers for respondents' flour have on them the name under which they are selling the particular flour such as "Cherokee Mills." In addition there appears upon the containers for the flour the brand name and a designation of the type of the flour such as "Tip-Top. Finest Patent Flour," "Tip-Top. Superlative Self-Rising Flour," "Cherokee Chief. High Patent Flour," "Blue Bonnet. Fancy Self-Rising Flour," "Ready To Bake. Self-Rising Flour." There is no such term as "process flour" or "processed flour" in the flour or milling industry. Such terms have no significance in the trade. Neither the word "process" nor the word "processed" appears anywhere on any of respondents' bags, labels, or containers, or in any of their literature as descriptive of any of their flour. The term "process flour" or "processed flour" could only mean flour handled twice, run through the mixing machines

and packed in sizes suitable for the family trade, or a low grade or off grade flour that has been mixed with good flour to bring the grade up to a suitable standard.

Paragraph Nine: When the term "mills" or "milling company," or "manufacturer of flour" is used in the flour industry it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. When either of such is used in the name of or in connection with the name of the concern that is on the container in which the flour is sold, it indicates to dealers and consumers that the flour contained in the package was ground from wheat by the concern whose name appears upon the package. And many dealers and consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than from one that bought the flour from a grinding concern, mixed it and packed it and then resold it, because they think that they get from such grinding concern more uniform product or get a better product for less money because of the elimination of a middleman's profit or costs. Many persons, dealers and consumers, have been buying respondents' flour believing them to be, because of the use of such words or terms in the names under which they do business and because of their representation that they are manufacturers of flour, a concern grinding wheat into flour. The crushing of wheat into flour is one of the oldest of human occupations. The act of crushing the grain into flour has always been known as milling, and the concern performing such act as a "mill," "miller" and "milling company," and this is still the significance of such terms to a large part of the trade and the consuming public. Respondents' use of such words or terms in the names under which they do business and their representation that they are manufacturers of flour tend to and do divert trade to respondents from concerns actually grinding wheat into flour and selling in the States in the Southeastern section of the United States, and from concerns engaged in the same character of business as respondents and selling in the said section of the United States, but that do not use such words or terms in the names under which they do business or represent that they are manufacturers of flour.

CONCLUSION.

The practices of respondents under the conditions and circumstances set forth in the foregoing findings of fact are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

C. W. Hunt,
Chairman.

(Seal)

Dated this 16th day of April, A. D., 1931.

Attest:

Otis B. Johnson,
Secretary.

United States of America

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of April, A. D., 1931.

Commissioner:

C. W. Hunt, Chairman,
William E. Humphrey,
Charles H. March,
Edgar A. McCulloch,
Garland S. Ferguson, Jr.

In the Matter of E. C. Faircloth, Sr., E. C. Faircloth, Jr., F. B. Evers and Estate of C. K. Evers co-partners doing business under the name Cherokee Mills, and individually.	Docket No. 1604

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents thereto, stipulation between counsel and briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its power and duties, and for other purposes,"

It Is Now Ordered that the respondents, E. C. Faircloth, Jr., F. B. Evers, estate of C. K. Evers and estate of E. C. Faircloth Sr. co-partners and individually, their representatives, agents and employees and the representatives, agents and employees of each of them, do cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the word "Mills" or word or words of like import, and from making representations through

advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such word or words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill where it is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such name or title, or by or through any such representations.

It Is Further Ordered, that the respondents above named within sixty (60) days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

In United States Circuit Court of Appeals, Sixth Circuit

Nos. 5958, 6098, 6099, 6100, 6101, 6102

ROYAL MILLING CO. ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petitions to review orders of the Federal Trade Commission

Decided May 4, 1932

[File endorsement omitted.]

Before MOORMAN, HICKENLOOPER, and SIMONS, Circuit Judges

Opinion

Filed May 4, 1932

SIMONS, Circuit Judge: Nashville, Tennessee, if not the center of e flour industry in the South, is at least the largest center of the lf-rising flour industry in the South, if not in the world. The x petitioners are all located in Nashville; they sell self-rising flour roughout the south-eastern States, in interstate commerce, and have ilt up a substantial industry. If not originators of the process of ixing self-rising flour, nor even its first producers, they were un-ubtedly early in the field, and in some respects pioneers in the in-stry, one of the petitioners having commenced business in 1902, d the others at dates from 1905 to 1925.

Self-rising flour is used extensively throughout the South in mak-g griddle cakes, biscuits, and other hot breads, and consists of flour th salt, soda and phosphate added in proper proportions and operly mixed. The petitioners buy their flour from grinding mills, t are not themselves grinders of wheat into flour. They also rket a commodity called "processed flour." This is a blend of two or more flours of different content with a small percentage of phosphate. Processed flour tends to counteract an overdose of soda in the hands of an unskilled housewife, and restores some extent the mineral content of flour removed in the grinding ocess.

All of the petitioners in their corporate or partnership names use e words "Mill" or "Milling." They also represent themselves manufacturers. Considerable machinery is required for the mak-g of self-rising and processed flour. Mills that grind wheat into ur and sell in the southeastern States also produce self-rising flour.

The process used by the grinding mills is substantially the same as that of the petitioners, and requires substantially the same machinery and the same amount of time. The petitioners' product, and that of the the grinding mills, are in active competition in the territory. There is also evidence that petitioners' product for some time came into competition with the product of one or two concerns in the same business which did not represent themselves as mills or milling companies. This competition, however, was never substantial, and it is doubtful on the record whether it still exists. Most of the petitioners were in the self-rising flour industry before the grinding mills undertook to produce the commodity, although one or two of the petitioners may have begun their enterprises later. Upon occasions some of the grinding mills buy surplus flour from other grinding mills, and when this is done the purchasers sell the flour under their own labels.

Early in the proceedings the petitioners offered by letter, and again in their amended answers, to add the phrase "Not grinders of wheat" to their trade or corporate names wherever used, to "cut off the possibility of deceiving or misleading any purchaser or customer." No attention was paid to the offer, and after a hearing in one of the cases, and a stipulation adopting the evidence in that case to all of the other cases, the several orders here reviewed were made by the commission, directing the several petitioners to desist from using the words "Mill" or "Milling" in their corporate or trade names, and to cease from making representations that they are manufacturers of flour, or that the flour sold by them comes direct from manufacturer to purchaser.

The proceedings which led to the orders here complained of were begun by the respondent under the provisions of section 5 of the Trade Commission act. The meaning of the act, its purpose, the extent of the power conferred by it upon the Federal Trade Commission and its supplementary relationship to the Sherman
190 Anti-trust Act and the Clayton Act, have frequently been considered by this court. (L. B. Silver Company v. Federal Trade Commission, 289 Fed. 985; Procter & Gamble Company v. Federal Trade Commission, 11 Fed. (2d) 47; Berkey & Gay Furniture Company v. Commission, 42 Fed. (2d) 427; Raladam Company v. Commission, 42 Fed. (2d) 430; Ohio Leather Company v. Commission, 45 Fed. (2d) 39; Federal Trade Commission v. Good-Grape Company, 45 Fed. (2d) 70.) The issues here presented do not, in our opinion, require, nor does their novelty now invite the careful study there pursued, nor the painstaking argument there presented. It is settled that a complaint may be filed by the commission, interstate commerce being involved, only if it shall appear among other things that a proceeding would be to the interest of the public, that the public interest must be specific and substantial, that this requirement is not satisfied by proof that there has been misapprehension and confusion on the part of purchasers, or even

that they have been deceived. (Federal Trade Commission v. Klesner, 280 U. S. 19; Federal Trade Commission v. Roladam Company, 283 U. S. 643.)

It is clear from the Klesner case that public interest in an unfair practice may be said to exist only when a substantial part of the purchasing public is injuriously affected by it or has suffered a loss. "It is not claimed that the article supplied by Klesner was inferior to that of Sammons, or that the public suffered otherwise financially by Klesner's use of the words 'Shade Shop.'" The mere fact that it is to the interest of the community that private rights be respected is not enough to support a finding of public interest. Public interest is sometimes said to exist when the unfair method employed threatens the existence of present or actual competition, when the circumstances involve flagrant suppression of the weak by the strong, or when the individual loss is small, but the aggregate is so serious and widespread as to make the matter of public consequence.

There is here manifestly no threat to competition. Such effect as the commission's orders may have upon the active competition that now exists will be in the direction of stifling rather than of preserving it. There is no oppression of the weak by the strong, the grinding millers being strong concerns organized into powerful trade organizations, and the record fails wholly to establish any injury to the public or any loss suffered by it, either individually or in the aggregate.

It is not shown that the petitioners' product is injurious to the consumer, or that it is in any way different from or inferior to
191 the product of their competitors. Nor did the commission so find. The commission goes no further than to conclude that when the terms "Mills" or "Milling Company" or "Manufacturer of flour" are used in the flour industry, it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour; that many dealers and consumers prefer to buy flour that comes directly from a concern that grinds the wheat into flour, rather than from one that buys the flour from a grinding concern, because they think that they get from such grinding concern more uniform product, or better product for less money; that many persons have been buying petitioners' flour because from the use of such words or terms in the names under which they do business they believe that they are manufacturers of flour. There is no finding that either dealer or consumer obtained an inferior product, or a product other than he sought to purchase. The case differs, therefore, in the essential prerequisite of public injury from Federal Trade Commission v. Winstead Company (258 U. S. 483) and Federal Trade Commission v. Good-Grape Company, supra. Failing to see any public injury, or financial loss in the methods of competition here reviewed, we find no public interest exists, much less one that is specific and substantial. If there is any deception in the petitioners' representations or trade names, it amounts at most to a private wrong,

as in the Klesner case, and one not to be redressed by action of the commission.

Another finding upon which the commission's conclusions are based remains to be noted. The commission found that the petitioners do not have or maintain a laboratory for testing or analyzing flours which they buy or sell; that they use only the paddle test, by which the characteristics or qualities of flour can not be determined. Assuming this finding to be based upon substantial evidence, we fail to see the appropriateness of the desist order to the evil, if any such exists. (Berkey & Gay Mfg. Company v. Commission, supra.) The orders of the commission in all of the six cases must be set aside and held for naught.

192 In United States Circuit Court of Appeals for the Sixth Circuit

Causes argued and submitted

March 14, 1932

Before MOORMAN, HICKENLOOPER, and SIMONS, JJ.

These causes are argued by T. H. Malone for petitioners and by B. B. Bane for respondent and are submitted to the court.

In United States Circuit Court of Appeals

Decree

Filed May 4, 1932

Nos. 5958, 6098, 6099, 6100, 6101, 6102

Petition to review order of the Federal Trade Commission

This cause came on to be heard on the transcript of record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the order or decree of the said Federal Trade Commission in this cause be, and the same is hereby, set aside and held for naught.

193 [Clerk's certificate to foregoing transcript omitted in printing.]

194 In Supreme Court of the United States

October term, 1932

Order extending time within which to apply for writs of certiorari

Filed July 27, 1932

On consideration of the motion by counsel for petitioner in the above-entitled causes, and good cause therefor having been shown,

It is now here ordered that the time within which petitions for writs of certiorari may be filed herein be, and the same is hereby, extended to and including the 24 day of Sept., 1932.

J. C. McReynolds,
Associate Justice of the Supreme Court of the United States.

Dated this 27th day of July, 1932.

195 [Omitted.]

196 [Omitted.]

197 [Omitted.]

[File endorsement omitted.]

198 Supreme Court of the United States

Order allowing certiorari

Filed October 24, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

199 In Supreme Court of the United States

Stipulation and addition to record

Filed Dec. 8, 1932

It is hereby stipulated by and between the parties to the above cause as follows:

1. That attached hereto are certified copies of the material portions of the petitions for review filed in the Circuit Court of Appeals for the Sixth Circuit in causes numbered 5958, 6098, 6099, 6100, 6101, and 6102, respectively, on the docket of said court, the decree in each

of which is under review herein; that the reasons for attaching hereto copies of only the "material portions" of said petitions are set forth in paragraphs 2 and 3 of this stipulation.

2. That the Royal Milling Company's petition for review (No. 5958) contained a lengthy and detailed attack on the findings and order of the Federal Trade Commission, as being unsupported by material evidence, etc.; that, on motion of the commission to strike all the allegations of said petition except those relating to petitioners' residence and the commission's complaint, findings, and order, the Circuit Court of Appeals for the Sixth Circuit entered the following order:

200 "The motion of the respondent to strike out portions of the petition for review having been seen and considered, and it appearing that the first five pages of the petition and the prayer thereof are apparently sufficient as a pleading to raise every question desired, it is ordered:

"(1) That the respondent need not answer and the clerk shall not print in the record the intervening pages of the petition.

"(2) That if hereafter any question arises as to the existence in the petition of any necessary allegation, the petitioner may refer to the original on file."

That the certified copy of the material portions of the Royal Milling Company's petition for review, attached to this stipulation, includes the "first five pages" and the "prayer" of said petition, but does not include Sections III, IV, V, and VI thereof (containing the detailed attack on the commission's findings and order).

3. That the petitions for review in the other five cases referred to in paragraph 1 of this stipulation were thereafter filed in said Circuit Court of Appeals and each of said five petitions in Section IV thereof incorporated by reference all of the allegations of Sections III, IV, V, and VI of the Royal Milling Company's petition; that, by stipulation between the parties filed in said Circuit Court of Appeals, Section IV of each of said five petitions was made subject to the motion to strike and to the ruling of the court thereon in the Royal Milling Company case; that the certified copy of the material portion of each of said five petitions, attached to this stipulation, does not include Section IV thereof.

4. That the Federal Trade Commission did not file any answers to the six petitions for review referred to in paragraph 1 of this stipulation.

5. That all exhibits filed in the Circuit Court of Appeals for the Sixth Circuit shall be filed as original exhibits with the clerk of the United States Supreme Court and shall not be printed

201 as a part of the record in this court, but the parties hereto shall be free to refer to said exhibits, or to quote therefrom in their briefs or oral arguments, in so far as they may be relevant to the issues presented in the petition for certiorari filed herein.

6. That this stipulation and copies of the petitions for review, as attached hereto, shall be printed by the clerk of this court and attached to the present printed transcript of the record in this court.

THOMAS D. THACHER,
Solicitor General.
THOMAS H. MALONE,
Counsel for Respondents.

DECEMBER 5, 1932.

202 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 5958

JOHN MCGRAW AND E. A. GLENNON, CO-PARTNERS DOING BUSINESS under the Firm Name and Style of Royal Milling Company, and individually

vs.

FEDERAL TRADE COMMISSION

To the Honorable the Judges of the United States Circuit Court of Appeals, for the Sixth Circuit:

The petition of John McGraw and E. A. Glennon, co-partners, under the name and style of Royal Milling Company, and individually, respectfully shows to the court:

I

COMMISSION'S ORDER

That you petitioners are residents of Nashville, Tennessee, in the Middle District of Tennessee, and within the Sixth Circuit, and that their place of business, as hereinafter set forth, is situated in said district and circuit.

Your petitioners and their predecessor have been engaged since 1902 in the manufacture and sale of commodities known as self-rising" and "processed" flour, in the city of Nashville, Tennessee, under the name and style of "Royal Milling Company." This business was established in 1902 under said name by R. C. Lindsey, and was purchased by petitioners in 1917. Petitioners, since they acquired the business, have also operated under the trade names "Richland Milling Company" and "Empire Milling Company." Petitioners paid for the trade name and good will of said business the sum of $7,500.00, when it was purchased in 1917.

203 On the 16th day of April, 1931, the Federal Trade Commission made a certain order upon petitioners, directing them:

1. To desist from using the words "Milling Company" in their trade name or names.

2. To cease from making representations—

(a) That they are manufacturers of flour.

(b) That the flour sold by them comes direct from manufacturer to purchaser.

The exact words of the order directed respondents to cease and desist "from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words 'Milling Company' or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by them or either of them under such title or name, or by or through any such representations."

A copy of the findings of the Federal Trade Commission and of said order to cease and desist in hereto attached, marked "Exhibit A," to this petition, and made part thereof.

II

OUTLINE

Your petitioners are not "manufacturers of flour" in the
204 sense of grinding wheat berries, and have no desire to make any representations to this effect, and do not believe that they have made such representations.

Nor do petitioners represent, or wish to represent, that their products come direct from a wheat-grinding mill to the customer.

But petitioners respectfully insist that they are manufacturers of "self-rising" and "processed" flour (as hereinafter explained), and that they have the right to so style themselves in their literature.

Petitioners also respectfully insist that they have the right to use the words "Mills" or "Milling" in their trade names, and the action of the Federal Trade Commission (as they are advised) has wrongfully taken away a valuable property right, to wit, the good will which has been built up over a long series of years, during which nobody questioned the right to use such name.

The competition involved in this matter is not between makers of flour in the primary sense, i. e., grinders of wheat berries.

Petitioners do not deal in flour just as it comes from the grinding mill—"raw flour," as it is termed in the record—nor are they in competition with any one dealing exclusively in such flour.

But the predecessor in business of petitioners, and other Nashville producers (some of whom are also ordered to "cease and desist"), many years ago put on the market and made popular a product known as "self-rising" flour, which has to be manufactured in a particular way from flour and other ingredients.

This product was so successful that the wheat-grinding mills, after bitterly opposing it, were forced to install the necessary machinery and take up its manufacture.

205 These grinding mills are, and for many years have been, banded together into a powerful organization known as the Southeastern Millers' Association.

It is this powerful organization which has made the complaint before the Federal Trade Commission, resulting in the present order to "cease and desist," and which is endeavoring to lessen and weaken competition, by instigating the present proceedings against the Nashville producers, a much smaller and weaker body.

The grinding millers, as already shown, were merely the imitators and followers of petitioners, or their predecessors, and other Nashville producers, in this industry. But now, after many years, seeking to pre-empt the field for themselves, they are accusing petitioners and other self-rising flour producers of deceiving the public by calling themselves "mills." And the Federal Trade Commission has been induced to lend them its aid in this effort to lessen or destroy competition.

Petitioners are advised that this is a complete misconstruction of the Federal Trade Commission act, which was designed to promote competition, and to protect the weak from the strong.

Petitioners are further advised that the element of "public interest" is wholly lacking in this case unless it be the public interest involved in protecting the weak from the strong and in making competition as keen as possible.

There is no difference between "self-rising flour" made by a grinding mill and that made by these petitioners. And it is conclusively shown that the consuming public has no interest in who makes the flour, but buys entirely by brands, using that brand which has given satisfaction, whether made by a grinding miller or a manufacturer of self-rising or processed flour.

206 Petitioners have already been put to great expense in resisting the improvident action of the Federal Trade Commission, continued in the face of an offer made by petitioners to state in their literature, etc., that they are not wheat-grinders, as hereinafter set forth, and unless the present order shall be set aside by your honors, they will be unjustly characterized as unfair producers of an inferior product, and their influence as competitors will be greatly lessened, to the prejudice of the consuming public, and for the sole benefit of their powerful commercial rivals. In addition to this, they will lose the good will built up under their trade names.

PRAYER

Premises considered, your petitioners pray:

1. That a copy of this petition be served on the Federal Trade Commission, and that said commission be required to answer the same.

2. That the said commission be required to certify to this court the record in this matter, including the pleadings, the proof in the Watauga Milling Co. case (docket No. 1601), and the stipulations in the other cases, and the various exhibits.

3. That in printing said record only one record be required for the six cases.

4. That upon consideration of said record, the aforesaid order of the Federal Trade Commission be by your honors reviewed, set aside, and for nothing held.

5. That petitioners be given such other, further, and different relief as they in the premises may be entitled to ask.

6. For general relief.

THOMAS H. MALONE,
WM. J. WADE,
Counsel for Petitioners.

207 [Clerk's certificate to foregoing paper omitted in printing.]

208 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 6098

D. V. JOHNSON, DOING BUSINESS UNDER THE NAME OF TENNESSEE Grain Company and Tennessee Milling Company

vs.

FEDERAL TRADE COMMISSION

To the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The petition of D. V. Johnson, doing business under the name of Tennessee Grain Company and Tennessee Milling Company, respectfully shows to the court:

I

That your petitioner is a resident of Nashville, Tennessee, in the Middle District of Tennessee, and within the Sixth Circuit, and that his place of business, as hereinafter set forth, is situated in said district and circuit.

In 1905 your petitioner, D. V. Johnson, procured a charter from the State of Tennessee under the corporate name "Tennessee Grain Company," and began business as a grain dealer. This charter

was surrendered in 1912, the said D. V. Johnson assuming all liabilities and taking over all assets. Said corporation was organized by your petitioner for the handling of grain, and petitioner continued business as a grain dealer until about the year 1920.

About the year 1920 machinery was installed by petitioner, in his plant, for the grinding of feed and whole-wheat flour. Thereafter, about 1925 or 1926, other machinery was installed for the mak-
209 ing of "self-rising" and "processed" flour, your petitioner at the present time being engaged exclusively in making "self-rising" and "processed" flour, with his plant and place of business in Nashville, Tennessee.

Petitioner is not now engaged in the grinding of whole-wheat flour, or feed, but his plant is equipped for the manufacture of these commodities, though in a limited way as compared to his output of "self-rising" and "processed" flour.

The words "and Tennessee Milling Company" were added to petitioner's trade name because the original corporate and trade name had become confused with similar trade names of other individuals thereafter entering business in this vicinity. This addition was made at a time when petitioner was operating grinding machinery for the manufacture of whole-wheat flour and feed, and before petitioner installed the machinery for making "self-rising" and "processed" flour.

II

That on the 16th day of April, 1931, the Federal Trade Commission made a certain order upon petitioner, directing him:

1. To desist from using the words "Milling Company" in his trade name.

2. To cease from making representations—

(a) That he is a manufacturer of flour.

(b) That the flour sold by him comes direct from manufacturer to purchaser.

The exact words of the order directed petitioner to cease and desist "from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words 'Milling Company' or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any
210 manner whatsoever, designed to promote or otherwise affect interstate commerce, that he is a manufacturer of flour, or that the flour sold by him comes direct from manufacturer to purchaser, unless and until respondent actually owns and operates or directly and absolutely controls a factory or a mill wherein is made by grinding or crushing the wheat berry any and all flour by him sold or offered for sale under such title or name, or by or through any advertisement or other representation that he is a manufacturer of flour."

A copy of the findings of the Federal Trade Commission and of said order to cease and desist is hereto attached, marked "Exhibit A," to this petition, and made part thereof.

III

That your petitioner is not at the present time a "manufacturer of flour" in the sense of grinding wheat berries, and has no desire to make any representation to this effect, and does not believe that he has made such representation.

Nor does your petitioner represent, or wish to represent, that his products come direct from a grinding mill to the customer.

But petitioner respectfully insists that he is a manufacturer of "self-rising" and "processed" flour (as hereinafter explained), and that he has the right to so style himself in his literature.

Petitioner also respectfully insists that he has the right to use the words "Mills" or "Milling" in his trade name, and the action of the Federal Trade Commission (as he is advised) has wrongfully taken away a valuable property right, to wit, the good will which has been built up over a long series of years, during which nobody questioned the right to use such name. This is especially true since petitioner had and has machinery for grinding wheat and feed in his plant, as hereinbefore set out.

211 The competition involved in this matter is not between makers of flour in the primary sense, i. e., grinders of wheat berries.

Petitioner does not deal in flour just as it comes from the grinding mill—"raw flour," as it is termed in the record—nor is he in competition with any one dealing exclusively in such flour. But other Nashville producers (some of whom are also ordered to "cease and desist") many years ago put on the market and made popular a product known as "self-rising" flour, which has to be manufactured in a particular way from flour and other ingredients.

This product was so successful that the wheat-grinding mills, after bitterly opposing it, were forced to install the necessary machinery and take up its manufacture.

These grinding mills are, and for many years have been, banded together into a powerful organization known as the Southeastern Millers' Association.

It is this powerful organization which has made the complaint before the Federal Trade Commission, resulting in the present order to "cease and desist," and which is endeavoring to lessen and weaken competition, by instigating the present proceedings against the Nashville producers, a much smaller and weaker body.

The grinding millers, as already shown, were merely the imitators and followers of petitioner and other Nashville producers, in this industry. But now, after many years, seeking to pre-empt the field for themselves, they are accusing petitioner and other self-rising

flour producers of deceiving the public by calling themselves "mills." And the Federal Trade Commission has been induced to lend them its aid in this effort to lessen or destroy competition.

Petitioner is advised that this is a complete misconstruction of the Federal Trade Commission act, which was designed to
212 promote competition, and to protect the weak from the strong.

Petitioner is further advised that the element of "public interest" is wholly lacking in this case, unless it be the public interest involved in protecting the weak from the strong and in making competition as keen as possible.

There is no difference between the "self-rising flour" made by a grinding mill and that made by petitioner. And it is conclusively shown that the consuming public has no interest in who makes the flour, but buys entirely by brands, using the brand which has given satisfaction, whether made by a grinding miller or a manufacturer of self-rising or processed flour.

Petitioner has already been put to great expense in resisting the improvident action of the Federal Trade Commission, continued in the face of an offer made by petitioner to state in his literature, etc., that he is not a wheat grinder, as hereinafter set forth, and unless the present order shall be set aside by your honors, he will be unjustly criticized as an unfair producer of an inferior product, and his influence as a competitor will be greatly lessened, to the prejudice of the consuming public, and for the sole benefit of his powerful commercial rivals. In addition to this, he will lose the good will built up under his trade name.

Premises considered, your petitioner prays:

1. That a copy of this petition be served on the Federal Trade Commission, and that said commission be required to answer the same.

2. That said commission be required to certify to this court the record in this matter, including the pleadings, the proof in the Watauga Milling Company case (docket No. 1601), and the stipulations in the other cases, and the various exhibits.

3. That in printing said record only one record for the
213 six cases be required.

4. That upon consideration of said record the aforesaid order of the Federal Trade Commission be by your honors reviewed, set aside, and for nothing held.

5. That petitioner be given such other, further, and different relief as he in the premises may be entitled to ask.

6. For general relief.

THOMAS H. MALONE,
WM. J. WADE,
Counsel for Petitioner.

[Clerk's certificate to foregoing paper omitted in printing.]

215 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 6099

NASHVILLE ROLLER MILLS, A CORPORATION, JOHN SCHULTZ, AS PRESIDENT, LOUIS BAUJAN, AS VICE PRESIDENT, VERNON S. TUPPER, AS SECRETARY AND TREASURER, AND EACH INDIVIDUALLY

vs.

FEDERAL TRADE COMMISSION

To the Honorable, the Judges of the United States Circuit Court of Appeals, for the Sixth Circuit:

The petition of Nashville Roller Mills, a corporation, John Schultz, as president, Louis Baujan, as vice president, Vernon S. Tupper, as secretary and treasurer, and each individually, respectfully shows to the court:

I

That your petitioner, Nashville Roller Mills, is a corporation duly chartered and existing under the laws of Tennessee, having its principal office and place of business in Nashville, Tennessee, in the Middle District of Tennessee, and within the Sixth Circuit, and that its plant and place of business as hereinafter set forth, is situated in said district and circuit. The petitioner John Schultz is president, the petitioner Louis Baujan is vice president, and the petitioner Vernon S. Tupper is secretary of said corporation.

Said petitioner Nashville Roller Mills was chartered under the laws of Tennessee in the year 1908, and from 1908 until July, 1913, said corporation operated a wheat-grinding plant, which was burned in July, 1913, and then rebuilt as a plant for the making of
216 "self-rising" and "processed" flour, and has since been operated as such.

II

That on the 16th day of April, 1931, the Federal Trade Commission made a certain order upon petitioners, directing them and each of them:

1. To desist from using the words "Mills" or "Milling Company."
2. To cease from making representations—

(a) That they are manufacturers of flour.

(b) That the flour sold by them comes direct from manufacturer to purchaser.

The exact words of the order directed petitioners and each of them to cease and desist "from carrying on the business of selling

flour in commerce among the several States of the United States under a trade name, corporate name or any other name which includes the word "Mills" or the words "Milling Company" or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such word or words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such title or name, or by or through any such representations."

A copy of the findings of the Federal Trade Commission and of said order to cease and desist, is hereto attached, marked "Exhibit A," to this petition, and made part thereof.

217 III

That your petitioner Nashville Roller Mills is not at the present time a "manufacturer of flour" in the sense of grinding wheat berries, and has no desire to make any representations to this effect, nor have the other petitioners, and petitioners do not believe that they, or either of them, have made such representations.

Nor do your petitioners represent, or wish to represent, that the products of petitioner Nashville Roller Mills come direct from a grinding mill to the customer.

But petitioners respectfully insist that petitioner Nashville Roller Mills is a manufacturer of "self-rising" and "processed" flour (as hereinafter explained), and that they have the right to so style petitioner Nashville Roller Mills in its literature.

Petitioners also respectfully insist that the petitioner Nashville Roller Mills has the right to use the word "Roller mills," or the words "Mills" or "Milling," in its corporate name, and the action of the Federal Trade Commission (as they are advised) has wrongfully taken away a valuable property right, to wit, the good will which has been built up over a long series of years, during which nobody questioned the right to use such name. This is especially true, in view of the facts as to the origin of said name, hereinbefore set out.

The competition involved in this matter is not between makers of flour in the primary sense, i. e., grinders of wheat berries. Petitioner Nashville Roller Mills does not deal in flour just as it comes from the grinding mill—"raw flour," as it is termed in the record—nor is it in competition with any one dealing exclusively in such flour. But said petitioner and other Nashville producers (some of

whom are also ordered to "cease and desist") many years ago put on the market and made popular a product known as "self-rising" flour, which has to be manufactured in a particular way from flour and other ingredients.

218 This product was so successful that the wheat-grinding mills, after bitterly opposing it, were forced to install the necessary machinery and take up its manufacture.

These grinding mills are, and for many years have been, banded together into a powerful organization, known as the Southeastern Millers' Association.

It is this powerful organization which has made the complaint before the Federal Trade Commission, resulting in the present order to "cease and desist," and which is endeavoring to lessen and weaken competition by instigating the present proceedings against the Nashville producers, a much smaller and weaker body.

The grinding millers, as already shown, were merely the imitators and followers of petitioner Nashville Roller Mills and other Nashville producers in this industry. But now, after many years, seeking to pre-empt the field for themselves, they are accusing petitioner Nashville Roller Mills and other self-rising flour producers of deceiving the public by calling themselves "Mills," and the Federal Trade Commission has been induced to lend them its aid in this effort to lessen or destroy competition.

Petitioners are advised that this is a complete misconstruction of the Federal Trade Commission act, which was designed to promote competition and to protect the weak from the strong.

Petitioners are further advised that the element of "public interest" is wholly lacking in this case unless it be the public interest involved in protecting the weak from the strong, and in making competition as keen as possible.

There is no difference between the "self-rising flour" made by a grinding mill and that made by petitioner Nashville Roller Mills.

219 And it is conclusively shown that the consuming public has no interest in who makes the flour, but buys entirely by brands, using the brand which has given satisfaction whether made by a grinding miller or a manufacturer of "self-rising" or "processed" flour.

Petitioners have already been put to great expense in resisting the improvident action of the Federal Trade Commission, continued in the face of an offer made by petitioners to state in the literature, etc., of the Nashville Roller Mills that it is not a wheat grinder, as hereinafter set forth, and unless the present order shall be set aside by your honors, petitioners will be unjustly criticized as unfair producers of an inferior product, and their influence as competitors will be greatly lessened, to the prejudice of the consuming public, and for the sole benefit of powerful commercial rivals. In addition to this, petitioner Nashville Roller Mills will lose the good will built up under its corporate name.

Premises considered, your petitioners pray:

1. That a copy of this petition be served on the Federal Trade Commission, and that said commission be required to answer the same.

2. That said commission be required to certify to this court the record in this matter, including the pleadings, the proof in the Watauga Milling Company case (docket No. 1601), and the stipulations in the other cases, and the various exhibits.

3. That in printing said record only one record for the six cases be required.

220 4. That upon consideration of said record the aforesaid order of the Federal Trade Commission be by your honors reviewed, set aside, and for nothing held.

5. That petitioners be given such other, further, and different relief as they in the premises may be entitled to ask.

6. For general relief.

THOMAS H. MALONE,
WM. J. WADE,
Counsel for Petitioners.

221 [Clerk's certificate to foregoing paper omitted in printing.]

222 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 6100

SNELL MILLING COMPANY, A CORPORATION, THOMAS E. SNELL, AS President, and J. A. Stevens, as Vice President, and Each Individually

vs.

FEDERAL TRADE COMMISSION

To the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The petition of Snell Milling Company, a corporation, Thomas E. Snell, as president, and J. A. Stevens, as vice president, and each individually, respectfully shows to the court:

I

That your petitioner Snell Milling Company is a corporation duly chartered and existing under the laws of Tennessee, with its principal office and place of business in Nashville, Tennessee, in the Middle District of Tennessee, and within the Sixth Circuit.

The petitioners, Thomas E. Snell and J. A. Stevens, are respectively president and vice president of said corporation, and reside within the Middle District of Tennessee.

Petitioner Snell Milling Company was chartered and organized in 1925 as a corporation under the laws of Tennessee, and has since that time conducted in Nashville, Tennessee, the business of manufacturing "self-rising" and "processed" flour, as hereinafter explained. Said corporation also operates under the trade
223 names "Peabody Mill Company" and "Mero Mills," having acquired the bags, stock of flour, good will, brands, and trade name of said "Mero Mills" in July 1928.

II

That on the 16th day of April, 1931, the Federal Trade Commission made a certain order upon petitioners, directing them and each of them:

1. To desist from using the words "Mills" or "Milling Company" in their corporate or trade names.

2. To cease from making representations—

(a) That they are manufacturers of flour.

(b) That the flour sold by them comes direct from manufacturer to purchaser.

The exact words of the order directed petitioners to cease and desist "from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or corporate name or any other name which includes the word 'Mills' or the words 'Milling Company' or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such title or name, or by or through any such representations."

224 A copy of the findings of the Federal Trade Commission and of said order to cease and desist is hereto attached, marked "Exhibit A," to this petition, and made part thereof.

III

That your petitioner Snell Milling Company is not a "manufacturer of flour" in the sense of grinding wheat berries, and petitioners have no desire to make any representations to this effect, and do not believe that they have made such representations.

Nor do your petitioners represent, or wish to represent, that the products of petitioner Snell Milling Company come direct from a grinding mill to the customer.

But petitioners respectfully insist that petitioner Snell Milling Company is a manufacturer of "self-rising" and "processed" flour (as hereinafter explained), and that petitioners have the right to so state in their literature.

Petitioners also respectfully insist that they have the right to use the words "Mills" or "Milling" in corporate or trade names, and the action of the Federal Trade Commission (as they are advised) has wrongfully taken away a valuable property right, to wit, the good will which has been built up over a series of years, during which nobody questioned the right to use such name.

The competition involved in this matter is not between makers of flour in the primary sense, i. e., grinders of wheat berries.

Petitioners do not deal in flour just as it comes from the grinding mill— "raw flour," as it is termed in the record—nor are they in competition with any one dealing exclusively in such flour. But the predecessor of petitioners and other Nashville producers (some
225 of whom are also ordered to "cease and desist") many years ago put on the market and made popular a product known as "self-rising" flour, which has to be manufactured in a particular way from flour and other ingredients.

This product was so successful that the wheat-grinding mills, after bitterly opposing it, were forced to install the necessary machinery and take up its manufacture.

These grinding mills are, and for many years have been, banded together into a powerful organization known as the Southeastern Millers' Association.

It is this powerful organization which has made the complaint before the Federal Trade Commission, resulting in the present order to "cease and desist," and which is endeavoring to lessen and weaken competition, by instigating the present proceedings against the Nashville producers, a much smaller and weaker body.

The grinding millers, as already shown, were merely the imitators and followers of petitioner's predecessor and other Nashville producers, in this industry. But now, after many years, seeking to pre-empt the field for themselves, they are accusing petitioners and other self-rising flour producers of deceiving the public by calling themselves "mills." And the Federal Trade Commission has been induced to lend them its aid in this effort to lessen or destroy competition.

Petitioners are advised that this is a complete misconstruction of the Federal Trade Commission act, which was designed to promote competition, and to protect the weak from the strong.

Petitioners are further advised that the element of "public interest" is wholly lacking in this case, unless it be the public interest involved in protecting the weak from the strong and in making competition as keen as possible.

226 There is no difference between the "self-rising flour" made by a grinding mill and that made by petitioner Snell Milling

Company. And it is conclusively shown that the consuming public has no interest in who makes the flour, but buys entirely by brands, using the brand which has given satisfaction, whether made by a grinding miller or a manufacturer of self-rising or processed flour.

Petitioners have already been put to great expense in resisting the improvident action of the Federal Trade Commission, continued in the face of an offer made by petitioners to state in their literature, etc., that they are not wheat grinders, as hereinafter set forth, and unless the present order shall be set aside by your honors, they will be unjustly criticized as unfair producers of an inferior product, and their influence as competitors will be greatly lessened, to the prejudice of the consuming public, and for the sole benefit of their powerful commercial rivals. In addition to this, they will lose the good will built up under their corporate and trade name.

Premises considered, your petitioners pray:

1. That a copy of this petition be served on the Federal Trade Commission, and that said commission be required to answer the same.

2. That said commission be required to certify to this court the record in this matter, including the pleadings, the proof in the Watauga Milling Company case (docket No. 1601), and the stipulations in the other case, and the various exhibits.

3. That in printing said record only one record for the six cases be required.

227 4. That upon consideration of said record the aforesaid order of the Federal Trade Commission be by your honors reviewed, set aside, and for nothing held.

5. That petitioners be given such other, further, and different relief as they in the premises may be entitled to ask.

6. For general relief.

(s) THOMAS H. MALONE,
(s) WM. J. WADE,
Counsel for Petitioners.

228 [Clerk's certificate to foregoing paper omitted in printing.]

229 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 6101

J. A. WELLS, J. M. WILKERSON, H. P. JOHNSON, AND MRS. H. P. Johnson, Co-partners Doing Business Under the Names State Milling Company and Myracle Milling Company, and Individually

vs.

FEDERAL TRADE COMMISSION

To the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The petition of J. A. Wells, J. M. Wilkerson, H. P. Johnson, and Mrs. H. P. Johnson, co-partners doing business under the names State Milling Company and Myracle Milling Company, and individually, respectfully shows to the court:

I

That your petitioners are residents of Nashville, Tennessee, in the Middle District of Tennessee, and within the Sixth Circuit, and that their place of business, as hereinafter set forth, is situated in said district and circuit.

Petitioners are engaged in the manufacture of commodities known as "self-rising" and "processed" flour, carrying on said business as a partnership under the name of "State Milling Company" and also "Myracle Milling Company." Said business was begun in the city of Nashville, Tennessee, by your petitioners on January 1, 1924, at which time they purchased the good will and equipment of the State Milling Company for the sum of $32,500.00. Said State Milling Company (their predecessor) had carried on this business under that name in the same location since about 1912.

230 II

That on the 16th day of April, 1931, the Federal Trade Commission made a certain order upon petitioners, directing them:

1. To desist from using the words "Milling Company" in their trade names.

2. To cease from making representations—

(a) That they are manufacturers of flour.

(b) That the flour sold by them comes direct from manufacturer to purchaser.

The exact words of the order directed petitioners to cease and desist "from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or

any other name which includes the words 'Milling Company' or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such title or name, or by or through any such representations."

A copy of the findings of the Federal Trade Commission and of said order to cease and desist is hereto attached, marked
231 "Exhibit A," to this petition, and made part thereof.

III

That your petitioners are not "manufacturers of flour" in the sense of grinding wheat berries, and have no desire to make any representation to this effect, and do not believe that they have made such representation.

Nor do your petitioners represent, or wish to represent, that their products come direct from a grinding mill to the customer.

But petitioners respectfully insist that they are manufacturers of "self-rising" and "processed" flour (as hereinafter explained), and that they have the right to so style themselves in their literature.

Petitioners also respectfully insist that they have the right to use the words "Mills" or "Milling" in their trade names, and the action of the Federal Trade Commission (as they are advised) has wrongfully taken away a valuable property right, to wit, the good will under the name "State Milling Company" which has been built up over a long series of years, during which nobody questioned the right to use such name. This is especially true, in view of the large price paid by petitioners, as hereinbefore set out.

The competition involved in this matter is not between makers of flour in the primary sense, i. e., grinders of wheat berries.

Petitioners do not deal in flour just as it comes from the grinding mill—"raw flour," as it is termed in the record—nor are they in competition with any one dealing exclusively in such flour. But the predecessor and business of these petitioners and other Nashville producers (some of whom are also ordered to "cease and desist") many years ago put on the market and made popular a product known as "self-rising flour," which has to be manufactured in a particular way from flour and other ingredients.

232 This product was so successful that the wheat-grinding mills, after bitterly opposing it, were forced to install the necessary machinery and take up its manufacture.

These grinding mills are, and for many years have been, banded together into a powerful organization known as the Southeastern Millers' Association.

It is this powerful organization which has made the complaint before the Federal Trade Commission, resulting in the present order to "cease and desist," and which is endeavoring to lessen and weaken competition, by instigating the present proceedings against the Nashville producers, a much smaller and weaker body.

The grinding millers, as already shown, were merely the imitators and followers of petitioners, or their predecessor, and other Nashville producers, in this industry. But now, after many years, seeking to prevent the field for themselves, they are accusing petitioners and other self-rising flour producers of deceiving the public by calling themselves "mills." And the Federal Trade Commission has been induced to lend them its aid in this effort to lessen or destroy competition.

Petitioners are advised that this is a complete misconstruction of the Federal Trade Commission act, which was designed to promote competition, and to protect the weak from the strong.

Petitioners are further advised that the element of "public interest" is wholly lacking in this case, unless it be the public interest involved in protecting the weak from the strong and in making competition as keen as possible.

There is no difference between the "self-rising flour" made by a grinding mill and that made by petitioners. And it is conclusively shown that the consuming public has no interest in who makes the flour, but buys entirely by brands, using the brand which has
233 given satisfaction, whether made by a grinding miller or a manufacturer of self-rising or processed flour.

Petitioners have already been put to great expense in resisting the improvident action of the Federal Trade Commission, continued in the face of an offer made by petitioners to state in their literature, etc., that they are not wheat grinders, as hereinafer set forth, and unless the present order shall be set aside by your honors, they will be unjustly criticized as unfair producers of an inferior product, and their influence as competitors will be greatly lessened, to the prejudice of the consuming public, and for the sole benefit of their powerful commercial rivals. In addition to this, they will lose the good will built up under their trade names.

Premises considered, your petitioners pray:

1. That a copy of this petition be served on the Federal Trade Commission, and that said commission be required to answer the same.

2. That said commission be required to certify to this court the record in this matter, including the pleadings, the proof in the Watauga Milling Company case (docket No. 1601), and the stipulations in the other cases, and the various exhibits.

3. That in printing said record only one record for the six cases be required.

4. That upon consideration of said record the aforesaid order of the Federal Trade Commission be by your honors reviewed, set aside, and for nothing held.

5. That petitioners be given such other, further, and different relief as they in the premises may be entitled to ask.

6. For general relief.

THOMAS H. MALONE,
WM. J. WADE,
Counsel for Petitioners.

234 [Clerk's certificate to foregoing paper omitted in printing.]

235 In the United States Circuit Court of Appeals for the Sixth Circuit

No. 6102

E. C. FAIRCLOTH, SR., E. C. FAIRCLOTH, JR., F. B. EVERS, AND ESTATE of C. K. Evers, Co-partners Doing Business under the Name Cherokee Mills, and Individually

vs.

FEDERAL TRADE COMMISSION

To the Honorable The Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The petition of E. C. Faircloth, sr., E. C. Faircloth, jr., F. B. Evers, and estate of C. K. Evers, co-partners doing business under the name Cherokee Mills, and individually, respectfully shows to the court:

I

That your petitioners are residents of Nashville, Tennessee, in the middle district of Tennessee, and within the sixth circuit, and that their place of business, as hereinafter set forth, is situated in said district and circuit.

Your petitioners have since 1910 been engaged in the manufacture and sale of commodities known as "self-rising" and "processed" flour in the city of Nashville, Tennessee, under the name and style of "Cherokee Mills." Said business was begun under the name "Cherokee Mills" in Nashville, Tennessee, in the year 1910, as aforesaid, by E. C. Faircloth, sr., and C. K. Evers, both of whom are now dead, the said E. C. Faircloth, sr., having departed
236 this life after the filing of the complaint herein by the Federal Trade Commission, and on the 13th day of March, 1929.

The present members of said partnership are estate of E. C. Faircloth, sr., estate of C. K. Evers, E. C. Faircloth, jr., F. W. Faircloth, and F. B. Evers.

Said partnership conducts its business in a plant in Nashville, Tennessee, and also a branch in Birmingham, Alabama, established in the year 1922. Both of said plants operate under the name "Cherokee Mills."

Petitioners are engaged in making "self-rising" and "processed" flour, and are also engaged in making mixed feed for cattle or other animals, and not for human consumption. Said "mixed feed" is produced by the grinding of wheat, corn, together with other elements, such as hay, alfalfa, etc. The making of this "mixed feed" is carried on by separate and different machinery from that used in the production of "self-rising" and "processed" flour, the feed-manufacturing unit and the grinding machinery therefor being a separate part of the general plant.

II

That on the 16th day of April, 1931, the Federal Trade Commission made an order upon petitioners, and each of them, directing them:

1. To desist from using the word "Mills" in their trade name.
2. To cease from making representations—

(a) That they are manufacturers of flour.

(b) That the flour sold by them comes direct from manufacturer to purchaser.

The exact words of this order directed petitioners, and each of them, to cease and desist "from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the word 'Mills' or word or words of like import, and from making
237 representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such word or words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour by them or any of them sold or offered for sale under such name or title, or by or through any such representations."

A copy of the findings of the Federal Trade Commission, and of said order to cease and desist, is hereto attached, marked "Exhibit A" to this petition, and made part thereof.

III

That your petitioners are not "manufacturers of flour" in the sense of grinding wheat berries, and have no desire to make any representation to this effect, and do not believe that they have made such representation; nor do your petitioners represent, or wish to represent, that the "self-rising" and "processed" flour made by them come direct from a grinding mill to the customer.

But petitioners respectfully insist that they are manufacturers of "self-rising" and "processed" flour (as hereinafter explained), and that they have the right to so style themselves in their literature.

Petitioners also respectfully insist that they have the right to use the word "Mills" in their trade name, and the action of the Federal Trade Commission (as they are advised) has wrongfully taken away a valuable property right, to wit, the good will which has been built up over a long series of years, during which nobody questioned
238 the right to use such name. This is especially true, since petitioners are engaged in grinding wheat and other materials in their plant (although not for human consumption), as hereinbefore set out.

The competition involved in this matter is not between makers of flour in the primary sense, i. e., grinders of wheat berries.

Petitioners do not deal in flour just as it comes from the grinding mill—"raw flour," as is is termed in the record—nor are they in competition with any one dealing exclusively in such flour. But petitioners and other Nashville producers (some of whom are also ordered to "cease and desist") many years ago put on the market, and made popular, a product known as "self-rising" flour, which has to be manufactured in a particular way from flour and other ingredients.

This product was so successful that the wheat-grinding mills, after bitterly opposing it, were forced to install the necessary machinery and take up its manufacture.

These grinding mills are, and for many years have been, banded together into a powerful organization known as the Southeastern Millers' Association.

It is this powerful organization which has made the complaint before the Federal Trade Commission, resulting in the present order to "cease and desist," and which is endeavoring to lessen and weaken competition by instigating the present proceedings against the Nashville producers, a much smaller and weaker body.

The grinding millers, as already shown, were merely the imitators and followers of petitioners and other Nashville producers in this industry. But now, after many years, seeking to pre-empt the field for themselves, they are accusing petitioners and other self-rising flour producers of deceiving the public, by calling themselves
239 "Mills." And the Federal Trade Commission has been induced to lend them its aid in this effort to lessen or destroy competition.

Petitioners are advised that this is a complete misconstruction of the Federal Trade Commission act, which was designed to promote competition and to protect the weak from the strong.

Petitioners are further advised that the element of "public interest" is wholly lacking in this case, unless it be the public interest involved in protecting the weak from the strong, and in making competition as keen as possible.

There is no difference between the "self-rising" flour made by a grinding mill and that made by petitioners, and it is conclusively shown that the consuming public has no interest in who makes the flour, but buys entirely by brands, using the brand which has given satisfaction, whether made by a grinding miller or a manufacturer of "self-rising" or "processed" flour.

Petitioners have already been put to great expense in resisting the improvident action of the Federal Trade Commission, continued in the face of an offer made by petitioners to use words in their literature, etc., which would relieve any misapprehension on the subject, as shown in the stipulation of counsel made before the Federal Trade Commission, and unless the present order shall be set aside by your honors, they will be unjustly criticized as unfair producers of an inferior product, and their influence as competitors will be greatly lessened, to the prejudice of the consuming public and for the sole benefit of their powerful commercial rivals. In addition to this, petitioners will lose the good will built up under their trade name.

Premises considered, petitioners prays:

1. That a copy of this petition be served on the Federal Trade Commission, and that said commission be required to answer the same.

240 2. That said commission be required to certify to this court the record in this matter, including the pleadings, the proof in the Watauga Milling Company case (docket No. 1601), and the stipulations in the other cases, and the various exhibits.

3. That in printing said record only one record for the six cases be required.

4. That upon consideration of said record, the aforesaid order of the Federal Trade Commission be by your honors reviewed, set aside, and for nothing held.

5. That petitioners be given such other, further and different relief as they in the premises may be entitled to ask.

6. For general relief.

THOMAS H. MALONE,
WM. J. WADE,
Counsel for Petitioners.

241 [Clerk's certificate to foregoing paper omitted in printing.]

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No. 393

In the Supreme Court of the United States

OCTOBER TERM, 1932

FEDERAL TRADE COMMISSION, PETITIONER

v.

ROYAL MILLING COMPANY ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

FEDERAL TRADE COMMISSION, PETITIONER

v.

ROYAL MILLING COMPANY ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General and the Chief Counsel of the Federal Trade Commission, on behalf of the Federal Trade Commission, pray that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Sixth Circuit entered in this cause on May 4, 1932, which set aside the orders of the Federal Trade Commission requiring the several respondents to cease and desist from certain methods of competition alleged to be unfair and in violation of Section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," c. 311, 38 Stat. 717.

STATEMENT

Complaints issued by the Federal Trade Commission in April, 1929, charged seven concerns located in Nashville, Tennessee (hereinafter referred to as the respondents), with the use of unfair methods of competition in interstate commerce, in violation of Section 5 of the Federal Trade Commission Act, by conducting the business of selling and soliciting sales of plain and self-rising wheat flour under representations, contained in their corporate or trade names, and otherwise, that they were "millers," "mills," or "manufacturers of flour," it being alleged that the use of these trade names and representations had the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flour to believe that they were buying direct from millers or manufacturers and to divert trade from competitors.

The respondents answered these complaints, and after hearing evidence (R. 35 et seq.), the Commission entered separate findings of facts and conclusions in each of the cases before it (R. 26–33, 740–747, 778–785, 816–824, 854–862, 890–899) and thereafter entered the cease and desist orders which were set aside by the court below. The findings and conclusions with respect to each of the respondents were substantially the same, and reference is here made to the findings and conclusions in one of the cases which may be taken as typical of the others.

The Commission found that McGraw and Glennon are partners conducting business under the

names "Royal Milling Company," "Richland Milling Company," and "Empire Milling Company"; that they are engaged in the business of buying flour from concerns that grind wheat into flour and then mixing such flours and in some instances adding leavening agents to create so-called self-rising flours. (R. 27.) Flour so prepared by these respondents is shipped from Nashville, Tennessee, in interstate commerce. The respondents are in competition with other partnerships, individuals, and corporations engaged in the sale of flour in interstate commerce. (R. 27.)

The Commission further found that the actual grinding of wheat into flour is a complicated process, requiring extensive and costly machinery; that the flour is milled to definite standards in order to insure uniformity; that concerns grinding wheat into flour employ chemists to analyze and test the wheats and flours and that for this purpose such firms maintain laboratories and experimental mills. It is only through such chemical tests that uniformity of brands can be maintained. (R. 28–29.) Concerns grinding wheat into flour are known as "manufacturers of flour." (R. 28.) In Nashville, Tennessee, which is the center of the flour industry in the south, concerns mixing self-rising flour and not grinding wheat into flour did not originally describe themselves as mills or milling companies or manufacturers of flour. (R. 30.)

It was further found that these respondents do not have or maintain a laboratory for testing or

analyzing the flours which they buy or sell and that they use only a test which is not adequate to determine the precise characteristics or qualities of the flour. (R. 30.) In advertising their product among the trade these respondents made statements such as "Order direct from the mill and save this [the middleman's profit] yourself" (R. 31; "Nothing can be better than the best, and we handle only the best. This is not a mere dream, but an actual fact—based on chemical analysis, baking tests, and the statements of those who sell and use our flour * * *" (R. 32). The products of these respondents are sold in containers on which appears the trade name under which the respondents sell the particular brand of flour, including the word "milling," and in addition the name given by the respondents to the particular flour.

Many dealers and consumers prefer to buy flour that comes directly from the concern which ground the wheat rather than from one which bought the flour and mixed it, packed it, and resold it, because they think that they get from the grinding concern a more uniform product or a better product for less money because of the elimination of a middleman's profit. (R. 32–33.) Many persons, dealers, and consumers have been buying respondents' flour because they believed, from the use of the trade names under which they do business or the representation

that they are "manufacturers of flour," that they were dealing with a concern grinding wheat into flour. It was also found that respondents sell their products in competition with those actually grinding wheat into flour and others engaged in the same character of business as respondents who do not represent themselves as "mills" or "milling companies" or "manufacturers of flour," and that the use of such words or terms in respondents' trade names and their representation that they are manufacturers of flour tend to and do divert trade to respondents from such competitors in the States in the southeastern section of the United States. (R. 33.)

The cease and desist orders entered by the Commission upon the basis of the findings and conclusions made required the respondents to cease from carrying on the business of selling flour under trade names which include the words "milling company" or words of like import, and from making representations that they are manufacturers of flour, or that their flour comes direct from manufacturer to purchaser, unless and until respondents actually own and operate or control a factory or mill where flour sold by them is made by grinding or crushing the wheat. (R. 34–35, 748–749, 786–787, 825–826, 863–864, 900–901.)

Respondents filed petitions in the court below asking that the orders of the Commission be set

aside. The cases were consolidated for hearing in that court and disposed of in one opinion and in a single decree. (R. 902–905.) The court below, without in any way disturbing the Commission's findings or holding that they were not supported by adequate evidence, set aside the orders of the Commission on the ground that the proceedings, as a matter of law, were not in the public interest and that the Commission acted beyond its statutory power. The basis of this decision was that the Commission had not proved or found that respondents' product was inferior to or different from the product of their competitors, and thus that the record failed to establish any injury to the public or any loss suffered by it. Since the court below did not disturb the Commission's findings or find that they were not supported by adequate evidence, it seems unnecessary for present purposes to review the evidence before the Commission.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred—

1. In holding that the proceeding was not in the public interest within the meaning of Section 5 of the Federal Trade Commission Act in view of the absence of any finding by the Commission or proof that respondents' product "is injurious to the consumer, or that it is in any way different from or inferior to the product of their competitors."

2. In holding that any deception which results from respondents' use of the trade names and rep-

resentations "amounts at most to a private wrong * * * and one not to be redressed by action of the commission."

3. In holding that upon the findings of fact and conclusions of the Commission the cease and desist orders made were not within the jurisdiction of the Federal Trade Commission.

4. In setting aside the cease and desist orders of the Federal Trade Commission.

REASONS FOR GRANTING THE WRIT

1. The case presents a question of public importance which has not been but should be decided by this Court. The Circuit Court of Appeals, holding that the proceeding was not in the public interest, seems to have based its conclusion that the Federal Trade Commission was without authority to issue the cease and desist orders in this case solely upon the failure of the Commission to find that respondents' product was inferior to or different from that of their competitors. The decision in this respect places a novel and, it is believed, erroneous limitation upon the Commission's jurisdiction under Section 5 of the Act. From the decisions of this Court in *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission* v. *Klesner*, 280 U. S. 19; *Federal Trade Commission* v. *Raladam Company*, 283 U. S. 643, it would appear that the Commission might require the discontinuance of misrepresentations having the effect of misleading

a substantial portion of the purchasing public and diverting trade from competitors, provided that there was not involved a purely private feud between competitors. The rule applied for the first time by the Circuit Court of Appeals in this case requires in addition proof in every such case that the purchasing public was misled into buying an inferior product, even though the misrepresentation might not relate to the quality of the product, as in this case, and even though the purchaser might be led to purchase that which he would not have purchased but for the misrepresentation.

It has been held that misleading the public to its prejudice does not depend upon whether the misrepresented article is or is not superior to the article unfairly competed against, but that the test of unfair competition is whether the deceptive practice led the purchaser to buy that which he did not intend to buy. *Ohio Leather Company* v. *Federal Trade Commission,* 45 F. (2d) 39, 41 (C. C. A. 6th); *Federal Trade Commission* v. *Balme,* 23 F. (2d) 615, 620 (C. C. A. 2d) certiorari denied, 277 U. S. 598. And, in cases arising under the Food and Drugs Act, and those applying the common law of unfair competition, the quality of a product sold under a false label, or in simulation of another's product, has been held irrelevant. *United States* v. *95 Barrels of Vinegar,* 265 U. S. 438, 445; *Pillsbury* v. *Pillsbury-Washburn Flour Mills Company, Ltd.,* 64 Fed. 841, 846 (C. C. A. 7th).

2. The Circuit Court of Appeals' conclusion that if any deception resulted from respondents' representations and trade names it amounted "at most to a private wrong, as in the Klesner case," is erroneous in two respects and would have the effect of denying all redress against such misrepresentations. It seems quite clear that respondents' representations do not violate any private rights and that no private suits based upon such misrepresentations could be maintained by a competitor. *Royal Baking Powder Co.* v. *Federal Trade Commission,* 281 Fed. 744, 752 (C. C. A. 2d). Moreover, the decision in *Federal Trade Commission* v. *Klesner, supra,* does not control the present case, since that case involved a controversy between two competitors of an essentially private nature. The present case concerns misrepresentations, relating to the marketing of an important food product, which were found to deceive a substantial portion of the purchasing public.

Wherefore it is respectfully submitted that the writ of certiorari should be granted.

THOMAS D. THACHER,
Solicitor General.

ROBT. E. HEALY,
Chief Counsel,
Federal Trade Commission.

SEPTEMBER, 1932.

BRIEF IN SUPPORT OF PETITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 902–905) is reported in 58 F. (2d) 581.

JURISDICTION

This was a petition to the Circuit Court of Appeals for the Sixth Circuit to review and set aside orders of the Federal Trade Commission entered under authority of Section 5 of "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," c. 311, 38 Stat. 717. The decree of the Circuit Court of Appeals reversing the orders was entered May 4, 1932. (R. 905.) The time for filing a petition for certiorari was duly extended by an order of one of the Justices of this Court to September 24, 1932. The jurisdiction of this Court is invoked under Section 5 (Paragraphs 4 and 5) of the Federal Trade Commission Act and under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the findings of fact and conclusions of the Federal Trade Commission in this case were sufficient to support its cease and desist orders without allegation, proof, or finding that respondents' product was injurious to the public or inferior to or different from the products sold by its competitors.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act (Act of September 26, 1914), c. 311, 38 Stat. 717,

719, is set forth in part in the Appendix, *infra*, pp. 18–21.

STATEMENT

A statement of the facts and of the errors relied on will be found in the petition.

ARGUMENT

The Commission in this case found, upon substantial evidence, that the terms "mill," "miller," "manufacturer," etc., as used by the respondents in their trade names, and otherwise, falsely described the business carried on by them, caused consumers who desired to purchase direct from grinding mills to purchase flour from the respondents, and diverted trade from concerns actually grinding wheat into flour which could properly be described as "mills," "millers," or "manufacturers of flour," and from concerns which carried on the same business as respondents' without representing themselves to be "millers" or "manufacturers of flour." The lower court held that, even though the consuming public might have been deceived and even though there were consumers who might have preferred to purchase flour from a grinding concern, since the Commission did not find that respondents' flours were injurious or that they were inferior to the product sold by the genuine millers, the proceeding was not "in the public interest" and the Commission was without authority to enter the order. The effect of the decision is that the misrepresentation of one's prod-

uct to the purchasing public which diverts trade from competitors is not within the reach of the statute, provided there is no misrepresentation of quality.

It is submitted that this test is unsound and should be rejected. It has been previously held in cases under Section 5 of the Federal Trade Commission Act that it was immaterial whether a misbranded or misrepresented article was superior to that for which it was offered as a substitute. In *Federal Trade Commission* v. *Balme,* 23 F. (2d) 615 (C. C. A. 2d), certiorari denied, 277 U. S. 598, the court held that there was sufficient public interest involved to support an order where the purchasing public, due to deception, secured an article which it did not intend to purchase. In that case the court stated (p. 620):

> The purchasing public should be protected from deception, if that deception results in their securing an article or product which they did not intend to purchase, as well as where an article is misbranded. *Federal Trade Commission* v. *Winsted Hosiery Co.,* 258 U. S. 483; *Royal Baking Powder Co.* v. *Federal Trade Commission,* 281 Fed. 744. *The test of unfair competition is whether the natural and probable result of the use by a respondent of a label which is deceptive to the ordinary purchaser makes him unwittingly, under ordinary conditions, purchase that which he did not intend to buy.* (Italics ours.)

In *Ohio Leather Company* v. *Federal Trade Commission,* 45 F. (2d) 39 (C. C. A. 6th), involving an order of the Commission prohibiting the use of the trade name "Kaffor-Kid" to describe a calfskin product, the court sent the case back to the Commission for further testimony on the question whether the public was misled by the alleged improper use of the term. There the same court which decided the present case stated (p. 41):

> The misleading of the ultimate public to its prejudice does not, of course, depend upon whether the substitute is equally as good as the original; the purchaser is entitled to get what he asks for, even if he is put off with something as good or better; but the qualities of the two articles are not immaterial in determining the purchaser's real intention and desire.

In *United States* v. *95 Barrels of Vinegar,* 265 U. S. 438, 445, a case under the Food and Drugs Act of June 30, 1906, this Court held that vinegar labeled as apple-cider vinegar but in fact made from dried apples was misbranded and stated that it was immaterial whether or not it was inferior to apple-cider vinegar.

In *Pillsbury* v. *Pillsbury-Washburn Flour Mills Co.,* 64 Fed. 841, 848 (C. C. A. 7th), a case involving the application of the common-law principles of unfair competition, the court stated:

> It is no answer to the charge of using a false and simulated brand that the article covered by the brand is of a superior quality

> to that which the purchaser desired to buy. You may not deceive a purchaser for his own benefit. The public will not be permitted to be deceived even for their own good. A purchaser has a right to buy the particular article he desires, and to be protected in the purchase.

If the test suggested by the lower court were adopted, every case under Section 5 involving misrepresentation would require a trial of the merits of the offending and competing products. Moreover, in an age when competing products tend to become standardized the consumer's choice of a particular product is often affected by collateral considerations. Each seller should be entitled to any advantage or selling point naturally accruing to him. If it is of advantage in the sale of flour to be termed a "mill," only true millers should reap that advantage. The best evidence that there is such advantage rests in the fact that these respondents have not only so described themselves but have used the term "mill" or "milling" in every trade name under which they have done business. For example, the Nashville Roller Mills sells its product also under the names of Cumberland Valley Milling Company, Belle Meade Mills, and The Red Mill (R. 783); the Snell Milling Company describes itself also as the Peabody Mill Company (R. 821); and the State Milling Company also sells as the Myracle Milling Company (R. 860). It was not merely fortuitous that all of these

names should have contained the words "mill" or "milling."

Respondents contended below that any deception which may have resulted from their use of milling names would have been cured if the Commission had accepted the offer of some of the respondents that they would state on their letterheads, circulars, etc., that they were not grinders of wheat. But if, as the Commission found, they falsely described themselves as mills, there would be no reason for permitting the misrepresentation followed by a disavowal. Moreover, a part of the deception results from the representations that consumers will save money by buying direct without the intervention of middlemen. A similar misrepresentation was the subject of the order discussed in *Federal Trade Commission* v. *Pure Silk Hosiery Mills, Inc.*, 3 F. (2d) 105 (C. C. A. 7th). Respondents themselves rehandle flour produced by millers and can not fairly claim that a middleman is eliminated by dealing with them.

The Circuit Court of Appeals stated (R. 904):

> If there is any deception in the petitioners' representations or trade names, it amounts at most to a private wrong, as in the Klesner case, and one not to be redressed by action of the Commission.

It seems quite clear that respondents' misrepresentations do not violate the private rights of their competitors. A cogent reason for the passage

of this section of the Federal Trade Commission Act was that representations which a trader made about his own product did not, under the common law, constitute unfair competition. It was necessary to recovery in a private suit that the offending party must have attempted to pass off his product as that of his competitors. *Royal Baking Powder Company* v. *Federal Trade Commission,* 281 Fed. 744, 750 (C. C. A. 2d).

In *Federal Trade Commission* v. *Klesner,* 280 U. S. 19, this Court held that no public interest existed in a purely private controversy which had arisen between two competitors. It was stated in that case, however, that public interest might exist even though the unfair practice did not violate any private right and that in determining whether a proceeding would be in the public interest the Commission exercised a broad discretion. It is submitted that where a substantial part of the public was misled by respondents' representations, where the names used by them falsely described their relation to their product, where other misrepresentations were made in connection with its sale, and where trade was necessarily diverted from their competitors, without palming off their own products as those of any one of their competitors, the public interest was sufficiently concerned to justify the jurisdiction assumed by the Commission.

CONCLUSION

It is submitted that the decision of the Circuit Court of Appeals is erroneous, and, in view of the general importance of the question decided, the petition for the writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER, 1932.

APPENDIX

Section 5 of the Federal Trade Commission Act (Act of September 26, 1914, c. 311, 38 Stat. 717, 719) provides, *inter alia:*

> That unfair methods of competition in commerce are hereby declared unlawful.
>
> The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.
>
> Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause

shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such per-

son, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written peti-

tion praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission snall be exclusive.

* * * * *

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No. 393

In the Supreme Court of the United States

OCTOBER TERM, 1932

FEDERAL TRADE COMMISSION, PETITIONER

v.

ROYAL MILLING COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

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BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Sixth Circuit (R. Vol. II, 189[1]) is reported in 58 F. (2d) 581.

JURISDICTION

The decrees of the Circuit Court of Appeals were entered on May 4, 1932. (R. Vol. II, 192.) The time for filing a petition for certiorari was duly extended by an order of one of the Justices of this Court to September 24, 1932. (R. Vol. II, 193.)

[1] Unless otherwise indicated all record references are to Vol. I.

Petition for certiorari was filed September 23, 1932, and was granted October 24, 1932. (R. Vol. II, 193.)

The jurisdiction of this Court rests on Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45), and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The principal question presented is whether, in a proceeding under Section 5 of the Federal Trade Commission Act, the Commission must find that respondents' product is injurious to the consumer or inferior to that of competitors, in order that the proceeding may be in the public interest. A question which this Court may also wish to consider is whether the Commission's findings that respondents diverted trade from competitors by falsely representing that they are milling companies and manufacturers of flour are supported by evidence.

STATUTE INVOLVED

The material portions of Section 5 of the Federal Trade Commission Act are set forth in the Appendix, *infra,* pp. 28–31.

STATEMENT

This is a proceeding to review six orders entered by the Federal Trade Commission under Section 5 of the Federal Trade Commission Act, each of which directed the respective respondents to cease and desist from selling flour in interstate commerce

under a trade name which includes the words "Milling Company" or words of like import, and from representing that they manufacture flour or that the flour sold by them goes direct from manufacturer to purchaser, unless and until they operate a mill which makes flour by grinding wheat.

In each of these cases the allegations of the amended complaint filed by the Commission and its findings of fact, conclusion, and order are substantially similar, and in each case the same evidence [2] was, by stipulation, made a part of the evidence before the Commission.[3] We shall therefore set forth the allegations in only one of the amended complaints (that of the Royal Milling Company) and the findings of the Commission in that case, which may be taken as typical of the other five.

The amended complaint in that case charges that the respondent partnership (which will be referred to in this connection as the respondent) sells plain and self-rising flour by means of false representations that it is a milling company and manufacturer of flour; that these representations have the capacity and tendency to lead dealers and prospective purchasers of its product to believe that they are

[2] The evidence thus stipulated was taken in a proceeding against a seventh blending concern (R. 23, 35), which is not a party to the present suit.

[3] R. 13–17; Vol. II, 12–15, 48–52, 86–90, 126–130, 162–165; 26–35; Vol. II, 26–35, 64–73, 102–112,, 140–150, 176–187; 23; Vol. II, 22, 60, 98, 137, 172.

buying direct from a miller or manufacturer of flour and without the intervention of a middleman or the cost of a middleman's profit; and that these acts and practices are prejudicial to the public and constitute unfair methods of competition in interstate commerce. (R. 13–17.)

After testimony had been taken before an examiner (R. 35), the Commission made the following findings of fact:

Respondent's place of business is at Nashville, Tennessee,[4] and it does business under the names Royal Milling Company, Richland Milling Company, and Empire Milling Company. (R. 26–27.) Under these trade names it sells plain and self-rising flour in bags to dealers located in various States, but particularly in the Southeastern States, from 5 to 8 brands being sold under each trade name. (R. 27.) Respondent does not grind wheat into flour, but it mixes together and stirs up in a batch mixer, flour which it buys from concerns which grind wheat into flour. (*Ibid.*) If the flour is to be self-rising, the correct proportions of salt, soda, and phosphate are added in the mixer; if it is to be plain flour, a little phosphate is added in the mixer. (*Ibid.*) The flour is run from the batch mixer into bins, from which it is elevated to a reel or sifter. (*Ibid.*) After being sifted it is packed into bags of the desired sizes. (*Ibid.*)

[4] Each of the other 5 respondent concerns is also located at Nashville. (R. Vol. II, 27, 65, 103, 141, 171.)

The entire operation takes from ten to fifteen minutes and the machinery in a plant like respondent's, with a capacity of 3,000 barrels a day, costs from $20,000 to $25,000. (*Ibid.*)

Respondent does not maintain a laboratory for testing or analyzing the flours which it buys or sells.[5] (R. 30.) It uses regularly only the so-called paddle test, which consists in simply putting the flour on a paddle and looking at it.[5] (*Ibid.*) The characteristics of the flour, such as the content of gluten, protein, moisture, starch, etc., can not be determined by this test.[5] (*Ibid.*) The test discloses only the relative appearance of the flour and this is of little value in even approximating its grade, because practically all concerns grinding wheat into flour add phosphate and a bleaching agent to the flour in the mill stream.[5] (*Ibid.*) Different concerns add different amounts, and a greater amount of bleaching makes a lower grade of flour appear better. (R. 30–31.) The quality or grade of the flour is not changed by mixing self-rising ingredients with it and running it through the equipment in respondent's plant. (R. 31.)

The machinery of a concern grinding wheat into flour, with a capacity of 3,000 barrels a day, costs about $600,000. (R. 29.) Grinding flour from wheat requires from a half hour to one and a half hours, or, if the time required for tempering the

[5] No such finding was made (R. Vol. II, 69) in the case of Nashville Roller Mills (No. 6099 in the court below).

wheat is included, from 8 to 60 hours. (*Ibid.*) Grinding is a complex and scientific process. (R. 28.) Prior to grinding, the wheat must be cleaned, graded, and tempered. (*Ibid.*) After it has been passed through rollers, it is sifted or bolted, and the siftings are carried in various streams to other sets of rollers where they are again crushed or ground. (*Ibid.*) The number of times this process of successively grinding and sifting is repeated differs in different mills. (*Ibid.*) Most of the concerns grinding wheat into flour and selling in the Southeastern States make self-rising flour, and they also make blended flour by blending different wheats or by blending various streams of flour produced in grinding the wheat. (R. 29, 30.)

Concerns grinding wheat into flour maintain a laboratory and an experimental mill in charge of a chemist, in which the wheats and flours are analyzed and tested in order to determine their various characteristics. (R. 29.) It is only from chemical tests that the contents of the flour can be determined and the uniformity of each brand of flour maintained. (*Ibid.*) All grinding mills produce and sell various grades of flour. (*Ibid.*)

When the term "mill," "milling company," or "manufacturer of flour" is used in the flour industry, it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour. (R. 32.) From time immemorial plants buying and blending flour but not grinding

wheat have been known as blending plants. (R. 31.) Many dealers and consumers prefer to buy flour from a concern grinding wheat into flour rather than from one which merely mixes and packs flour, because they think they get from the former a more uniform product, or a better product for less money because of the elimination of the middleman's profit or costs. (R. 32–33.) The names under which respondent does business and its representations have led many persons, dealers, and consumers who buy its products to believe that it is a concern grinding wheat into flour. (R. 33.) Respondent's use of these trade names and its representation that it is a manufacturer of flour tend to and do divert trade to it from concerns which grind wheat into flour, and from concerns engaged in the same character of business as respondent but not doing business under such trade names or representing that they are manufacturers of flour. (*Ibid.*)

In each of the six cases here under review the Commission concluded (R. 33; Vol. II, 33, 71, 110, 148, 185) that the practices set forth in its findings of fact were to the prejudice of the public and respondents' competitors and were unfair methods of competition in interstate commerce, and it entered the cease and desist orders previously described (*supra*, pp. 2–3). Each of the six concerns affected then filed in the Circuit Court of Appeals for the Sixth Circuit a petition to review the Com-

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mission's order. (R. Vol. II, 195, 198, 202, 205, 209, 212.)

The Circuit Court of Appeals disposed of the six cases in one opinion. (R. Vol. II, 189.) It held (R. Vol. II, 189–190) that the petitioners (respondents here) were in active competition with grinding mills, and it did not disturb (R. Vol. II, 191) the Commission's findings that these petitioners sold their product by means of misrepresentations which diverted trade from competitors. But it held, on the authority of *Federal Trade Commission* v. *Klesner,* 280 U. S. 19, that the requirement of the statute that the proceeding be "to the interest of the public" was not satisfied. It said (R. Vol. II, 191):

> It is not shown that the petitioners' product is injurious to the consumer, or that it is in any way different from or inferior to the product of their competitors. Nor did the commission so find. * * * There is no finding that either dealer or consumer obtained an inferior product, or a product other than he sought to purchase. The case differs, therefore, in the essential prerequisite of public injury from *Federal Trade Commission* v. *Winsted Company* (258 U. S. 483) and *Federal Trade Commission* v. *Good-Grape Company, supra.* Failing to see any public injury, or financial loss in the methods of competition here reviewed, we find no public interest exists, much less one that is specific and substantial. If there is any deception in the petitioners' representa-

tions or trade names, it amounts at most to a private wrong, as in the *Klesner case,* and one not to be redressed by action of the commission.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In holding that the proceeding was not in the public interest within the meaning of Section 5 of the Federal Trade Commission Act in view of the absence of any finding by the Commission or proof that respondents' product "is injurious to the consumer, or that it is in any way different from or inferior to the product of their competitors."

2. In holding that any deception which results from respondents' use of the trade names and representations "amounts at most to a private wrong * * * and one not to be redressed by action of the commission."

3. In holding that upon the findings of fact and conclusions of the Commission the cease and desist orders made were not within the jurisdiction of the Federal Trade Commission.

4. In setting aside the cease and desist orders of the Federal Trade Commission.

SUMMARY OF ARGUMENT

I. The evidence amply supports the Commission's findings that respondents represent themselves to be mills or milling companies, and manufacturers of flour; that the trade and the public

understand these terms to mean a concern which grinds wheat into flour; that respondents do not grind wheat, but mix or blend flour purchased from grinding mills; that respondents' representations deceive many of their customers and tend to divert trade from grinding mills because of the preference of a substantial portion of the trade for flour made by grinding mills. Respondents' misrepresentations are "unfair" methods of competition. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483. Both the Commission and the court below found that respondents sell in competition with grinding mills. The volume of respondents' business (over $5,600,000 in 1929) shows that their misrepresentations threaten these competitors with injury to a substantial extent.

II. The Commission correctly concluded that the proceeding was in the public interest. The practices complained of affect a large volume of commerce, many competitors and a still larger number of purchasers. Since the primary object of the Act is maintenance of fair competition, the court below erroneously applied as the sole test of public interest, in the absence of flagrant oppression of the weak by the strong, protection of the health or pecuniary interests of the ultimate consumer. This case is within the dictum of *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, that an unfair practice which is serious and widespread may be a matter of public concern where no private

suit to stop it would be brought. It is of public concern to prevent deceptive practices calculated to deprive purchasers of the opportunity to exercise a preference for the product of competitors and calculated to deprive competitors of the advantage of this preference. We submit that the decision of the court below is unsound and contrary to the interpretation which the courts have previously placed upon Section 5 of the Federal Trade Commission Act.

ARGUMENT

I

THE FINDINGS OF THE COMMISSION THAT RESPONDENTS DIVERTED TRADE FROM COMPETITERS BY FALSELY REPRESENTING THAT THEY WERE MILLS AND MANUFACTURERS OF FLOUR ARE SUPPORTED BY EVIDENCE

In the recent case of *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 646–647, this Court defined the scope and application of Section 5 of the Federal Trade Commission Act as follows:

> By the plain words of the act, the power of the Commission to take steps looking to the issue of an order to desist depends upon the existence of three distinct prerequisites: (1) that the methods complained of are *unfair;* (2) that they are methods of *competition* in commerce; and (3) that a proceeding by the Commission to prevent the use of the methods appears to be in the *interest of the public.*

We shall deal later with the question whether the Commission's orders were in the public interest. (*Infra*, pp. 18–25.) We propose now to show that the practices against which the orders were directed are unfair and that they are methods of competition in commerce. In this connection it should be noted that the statute makes the Commission's findings of fact, "if supported by testimony," conclusive. (*Infra*, p. 31.)

Both the Commission and the court below have found that respondents sell their product in competition with grinding mills and we understand that respondents do not question this finding. There was also evidence that certain concerns selling flour in the Southeastern States, which, like respondents, merely mix, blend, and pack flour, do not call themselves mills or milling companies. (R. 297–300, 305–307.)

The unfair method of competition charged and found in this case is that respondents represent themselves to be mills, milling companies, or manufacturers of flour, when, in fact, they are not. Respondents are not mills and they are not so regarded in the trade. The belief is universal in the trade that a mill is a concern which grinds wheat into flour. (R. 125, 132, 136, 194, 217, 264, 271.) Those in the trade who are familiar with the character of respondents' operations refer to them, not as mills, but as "blenders" or "mixers." (R. 435, 442, 481, 514, 517.)

In the light of this testimony it is immaterial that grinding mills, when they mix self-rising flour, employ the same machinery and process as respondents. It is not the use of this machinery or process which gives them the classification of mill or milling company. *Freight Bureau* v. *Southern Railway Co.*, 41 I. C. C. 483, upon which respondents relied in the court below, does not support them since the Interstate Commerce Commission expressly refused (p. 497) to pass upon the question whether or not the treatment accorded self-rising flour is "milling." And the alleged classification of respondents by the Census Bureau as "re-manufacturers" has no bearing upon the propriety of their use of the terms "mill," "milling company," and "manufacturer." Even if this were otherwise, it would not be binding in this proceeding. See *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission*, 286 U. S. 299, 312.

There is also ample evidence that respondents' misrepresentations as to the nature of their business deceive many of their customers and tend to divert trade to respondents. Many of these customers testified that they thought that respondents were millers, at least until this proceeding commenced, or, in some instances, until being called to testify. (R. 139–140, 142–143, 145, 190, 218–219, 266, 267–268, 386, 411, 424, 446.) A substantial number of these customers testified that they preferred to buy from a concern which grinds wheat

into flour. (R. 125, 132, 137, 142, 150, 195, 264, 272.) They gave as a reason for this preference that they thus expected to get a better price (R. 148, 219, 268), or superior quality (R. 195, 208, 210, 212–213, 215), or a more uniform product (R. 121, 125, 137, 265).

All but two of the respondent concerns employ two or more trade names, each containing the words "milling company," or like words. (R. 27; Vol. II, 65, 103, 141.) We submit that the adoption of these trade names was not merely accidental. It indicates that respondents themselves believe that a substantial part of the flour trade prefers to buy from milling companies. It also indicates that they have deliberately attempted to obtain the advantage of this preference. Thus the Nashville Roller Mills, a corporation, does business not only under its own name, but also under the trade names Cumberland Valley Milling Company, Belle Meade Mills, and The Red Mill. (R. Vol. II, 64–65.) The Snell Milling Company, a corporation, does business both under its own name and under the trade names Mero Mills and Peabody Mill Company.[6] (R. Vol. II, 102–103.)

That respondents themselves believe that a substantial part of the flour trade prefers to buy flour

[6]Another blender against whom the Commission filed a complaint, but not involved in this proceeding, has operated under the names Watauga Milling Company, F. J. McCarthy Milling Company, Southern Flour Mills Company, Modern Milling Company, and Star Mills. (R. 35, 39–40, 51–52.)

from grinding concerns is further shown by the fact that respondents, in addition to employing these trade names, make representations calculated to induce the belief that they are mills converting wheat into flour, rather than merely blenders or mixers of flour. The State Milling Company has made the following statements in letters, circulars, and literature circulated among the trade (R. Vol. II, 145–146.)

> Our products are made from select wheat in a perfectly equipped mill by millers who know how.
>
> ---
>
> We are glad to be able to give you advantage of the exceedingly good purchases we have made in wheat and we now call your attention to our Greatly Reduced Prices. * * *
>
> When you buy from us you are buying direct from the mill, thereby eliminating all unnecessary middleman's profit. Our flour is made from #2 soft red wheat acknowledged to be the best wheat grown for the manufacture of flour, and we invite a comparison of its quality with any other flour regardless of price.
>
> ---
>
> For the past six weeks we have had a nice stock of wheat on hand and have been giving you the advantage of it by quoting you considerable lower than the market, however our supply bought on the lower market is about exhausted and to-day cash wheat is

> very strong * * * making flour advance in proportion to this.

> We are very anxious for you to give our flour a trial for it is made from the best #2 red wheat which produces a product unequalled and our overhead is very light which enables us to sell cheaper than most of our competitors.

The record discloses similar statements circulated among the trade by other respondent concerns. The trade is urged to order "direct from the mill" or to compare respondents' prices with those of "other mills." (R. 31; D–1600, Ex. 8.[7] See also D–1602, Ex. 10.) Frequently the language employed, while not directly stating that respondents are mills manufacturing their product from wheat, is calculated to convey this impression. (D–1597, Ex. 13; D–1599, Ex. 5; D–1601, Ex. 30; D–1604, Exs. 9, 12.) Most of the respondents use letterheads which, in addition to their trade names, contain the words "Manufacturers of High Grade Flour" or similar words. (R. Vol. II, 182–183; D–1597, Ex. 12; D–1598, Ex. 2; D–1600, Ex. 4. See also D–1602, Ex. 1.)

If respondents' representations are, as we have attempted to show, false and calculated to deceive a substantial part of the trade, they constitute an "unfair" method of competition. *Federal Trade*

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[7] The exhibits in the case have been filed with this Court as original exhibits and, by stipulation, may be referred to, so far as material, by either party. (R. Vol. II, 193–194.)

Commission v. *Winsted Hosiery Co.*, 258 U. S. 483, *supra,* sustained an order of the Commission which directed the respondent company to cease and desist from using the words "Merino," "Wool," or "Worsted" in any label or brand on underwear not composed wholly of wool. The Court held (pp. 492–493) that, although these words may have been long established in the trade and generally understood by it as indicating goods partly of cotton, their use was nevertheless an unfair method of competition since they were literally false and were calculated to deceive and did deceive a substantial portion of the purchasing public. We submit that there is no difference in principle between the use of a misleading trade-mark or brand and the use of a misleading trade name.

Respondents did a business in 1929 of over $5,600,000 (R. 24; Vol. II, 23, 62, 99, 138, 174), and a seventh concern, against which the Commission issued a like complaint, did a business in 1928 of $2,400,000 (R. 35, 76), making the total business of these blenders of flour who designate themselves mills over $8,000,000. In view of the volume of this business, any misrepresentation by respondents tending to divert trade clearly threatens their competitors with substantial injury. The case is therefore within the rule laid down in *Federal Trade Commission* v. *Raladam Company,* 283 U. S. 643, *supra.* In that case the Court, after stating that the Federal Trade Commission could deal with unfair practices only in relation to their actual or po-

tential effect upon the trade of competitors, said (p. 651):

> It is enough that there be present or potential substantial competition, which is shown by proof, or appears by necessary inference, to have been injured, or to be clearly threatened with injury, to a substantial extent, by the use of the unfair methods complained of.

We submit that it is immaterial that grinding mills sometimes purchase flour from other grinding mills and put it out under their own brands. This does not alter the fact that the business of the true miller, as ordinarily conducted, does not involve any intermediate sale of flour and does involve the safeguards as to uniformity and quality which result from the tests and analyses employed in their grinding business. And it appears that millers thus buy flour only in limited amounts or under exceptional circumstances. (R. 165, 227, 234.)

II

THE COMMISSION PROPERLY CONCLUDED THAT ITS ORDERS WOULD BE IN THE PUBLIC INTEREST

Section 5 of the Federal Trade Commission Act authorizes a proceeding thereunder if it shall appear to the Commission that action by it "would be to the interest of the public." As previously stated (*supra,* p. 8), the court below decided this case upon the narrow ground that, because the Commission had not found that respondents' products

were injurious to the public or inferior to those of their competitors, the proceedings were not in the public interest and amounted at most to a private wrong. It appeared to base this decision upon *Federal Trade Commission* v. *Klesner,* 280 U. S. 19, *supra.*

In that case the Commission entered an order directing a small trader in the District of Columbia to desist from using a trade name which another small trader had used earlier. The facts disclosed that the respondent had adopted this name out of spite, as the result of a controversy growing out of breach of a sublease. This Court said (p. 28) that the alleged unfair competition "arose out of a controversy essentially private in its nature." It therefore held that there was no element of public interest to justify the Commission in taking jurisdiction of this controversy. It said (p. 28):

> In determining whether a proposed proceeding will be in the public interest the Commission exercises a broad discretion. But the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest. To justify filing a complaint the public interest must be specific and substantial. * * * Sometimes [it is so], because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be

> brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it.

We submit that the present proceeding is squarely within the illustration stated by this Court of a case where the public interest involved would warrant action by the Commission. Respondents sell their product throughout the Southeastern States and in competition with approximately 170 grinding mills selling in the same territory. (*Supra,* p. 6; R. 30.) In 1929 their business was over $5,600,000 and the business of the concerns against which the Commission brought this proceeding appears to have been at least $8,000,000. (*Supra,* p. 17.) The practices complained of, therefore, affect a large volume of business, many competitors, and a still larger number of purchasers. These aspects of the public interest were entirely ignored in the decision below.

In *Federal Trade Commission* v. *Sinclair Refining Co.,* 261 U. S. 463, 476, the Court, referring to the Trade Commission Act and the Clayton Act, said:

> The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain.

Since the primary object of the statute is to maintain fair competition, it seems erroneous to make protection of the health or pecuniary interests of

the ultimate consumer the sole test of public interest. If injury to the consumer is found, a proceeding under Section 5 may be especially in the public interest, but it may also be within the sphere of the public interest where a substantial amount of commerce is affected by the unfair practices and no particular trader is legally entitled, or sufficiently injured, to obtain redress.

In the illustration of a proceeding in the public interest, quoted (*supra*, pp. 19–20) from the *Klesner* case, one factor stated is that "no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it." This is the situation here. In addition, it seems clear that no private suit to remedy the wrong would lie. It has been held that, apart from the Trade Commission Act, an action of unfair competition can be maintained only when a property right of the complainant has been invaded and that the complainant must show, in addition to misbranding or deception, that the wrongdoer has palmed off his goods as those of the complainant. *American Washboard Co.* v. *Saginaw Mfg. Co.*, 103 Fed. 281 (C. C. A. 6th); *Royal Baking Powder Co.* v. *Federal Trade Commission*, 281 Fed. 744, 750–752 (C. C. A. 2d).

If the purchasing public prefers, other things being equal, the flour of grinding mills to that of blenders, it is of public concern to prevent decep-

tive practices made in competition which tend to deprive purchasers of the opportunity to exercise this preference and which tend to deprive competitors of the advantage resulting from this preference. The only difference between this case and the *Winsted case, supra,* is that here the deception relates to the nature of respondents' business; there it related to the character of the goods themselves. But this distinction is of no importance where, as here, there are findings supported by testimony that a substantial number of purchasers believe that the price or quality of the goods in question is affected by the nature of the seller's business. (*Supra,* pp. 7, 13–14.)

The effect of the lower court's decision is that misrepresentation which diverts trade from competitors is not within the reach of the statute, provided there is no direct misrepresentation of quality. We submit that this test is unsound and contrary to the interpretation previously placed upon the Act. *Federal Trade Commission* v. *Balme,* 23 F. (2d) 615 (C. C. A. 2d), certiorari denied, 277 U. S. 598, sustained an order by the Commission which directed the respondent to desist from selling its hair dye in a container of the same general appearance as that used by a competitor. This representation did not relate to the quality of the goods. Furthermore, no question of inferiority was presented, there being testimony (p. 619) that respondent and its competitor used the same formu-

lae. The court, in holding that the proceeding was in the public interest, said (p. 620):

> The purchasing public should be protected from deception, if that deception results in their securing an article or product which they did not intend to purchase, as well as where an article is misbranded. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483, 42 S. Ct. 384, 66 L. Ed. 729; *Royal Baking Powder Co.* v. *Federal Trade Commission* (C. C. A.), 281 F. 744. The test of unfair competition is whether the natural and probable result of the use by a respondent of a label which is deceptive to the ordinary purchaser makes him unwittingly, under ordinary conditions, purchase that which he did not intend to buy. *Notaseme Hosiery Co.* v. *Straus* (C. C. A.), 201 F. 99.

In *Ohio Leather Company* v. *Federal Trade Commission*, 45 F. (2d) 39 (C. C. A. 6th), involving an order of the Commission prohibiting the use of the trade name "Kaffor-Kid" to describe a calfskin product, the court sent the case back to the Commission for further testimony on the question whether the public was misled by the alleged improper use of the term. There the same court which decided the present case stated (p. 41):

> The misleading of the ultimate public to its prejudice does not, of course, depend upon whether the substitute is equally as good as the original; the purchaser is en-

titled to get what he asks for, even if he is put off with something as good or better; but the qualities of the two articles are not immaterial in determining the purchaser's real intention and desire.

Federal Trade Commission v. *Pure Silk Hosiery Mills, Inc.*, 3 F. (2d) 105 (C. C. A. 7th), was a proceeding by the Commission to enforce an order under Section 5 directed against the sale of hosiery under a trade name which included the word "Mills" unless and until the company owned or operated a hosiery mill. The court granted an injunction to enforce this order. While the only question discussed by the court was the defense that the respondent, after it had acquired a minority stock interest in a hosiery mill, owned a mill within the meaning of the order, the decision necessarily sustained the validity of the Commission's order. (*Federal Trade Commission* v. *Balme, supra*, p. 618.)

In the present case, the court below recognized that there was a public interest in preventing unfair methods of competition when there was "flagrant oppression of the weak by the strong," as well as when direct injury to the purchasing public was shown. But the court did not content itself with saying, as was admitted, that there was no such "flagrant oppression" in this case. It said (R. Vol. II, 191) that such effect as the Commission's order might have upon the existing active competition would be in the direction of stifling rather than

of preserving it, "the grinding millers being strong concerns organized into powerful trade organizations." The underlying assumption appears to be that, when there are strong competitors, the public has no interest in preventing unfair methods of competition; that the Act intends to foster competition by permitting the relatively weaker concerns to use unfair methods of competition prohibited to their stronger rivals. We submit that neither the terms of the Act nor its history warrants this interpretation and that, in addition, there is nothing in the record to show that respondents are relatively weaker than the individual grinding mills. The court below appears to have based its statements concerning the "powerful trade organizations" of the grinding mills upon a statement made in *Freight Bureau* v. *Southern Railway Co.*, 41 I. C. C. 483, 488, *supra*, a case decided October 17, 1916.

In the court below respondents relied upon the fact that, after the taking of testimony had begun (R. 35), respondents offered to place on their letterheads, bags, invoices, etc., in conspicious lettering, the words "Not Grinders of Wheat," and in one case the words "Packed by Cherokee Mills" (R. 684–685). The Commission entered orders that these suggestions be considered at the time of final argument on the merits. (R. 22; Vol. II, 21, 59, 97, 136, 171.) The Commission could not properly decide whether or not these offers would effec-

tively cure the unfair methods of competition charged in the complaints until it had before it all the evidence which might be offered. In its final decision the Commission was not required to allow respondents to continue their misrepresentations, followed by a disavowal. The Commission was entitled to grant relief which its experience led it to believe would effectively put an end to the various forms of misrepresentation which it found had been practiced.

This is not a case like *N. Fluegelman & Co.* v. *Federal Trade Commission,* 37 F. (2d) 59 (C. C. A. 2d), where the trade name under attack had two meanings, one of which the respondent might legitimately use and one of which tended to deceive. In that case a manufacturer of cotton fabrics sold under the trade names "Satinmaid" and "Satinized." Since satin means both a certain kind of weave and goods made from silk, the court modified the Commission's order to prohibit use of these trade names unless words such as "a cotton fabric" or "no silk" were added in equally conspicuous letters.

The Commission's orders do not deprive the respective respondents of the value of their trade names except in so far as "its value may be in its deception." (See *Brougham* v. *Blanton Mfg. Co.,* 249 U. S. 495, 502.) The Commission's order would not prevent the partnership doing business as the Royal Milling Company from trading under such

names as Royal Flour Company, Royal Blending Company, Royal Processing Company, etc.

CONCLUSION

It is respectfully submitted that the decrees below should be reversed, with directions to affirm the orders of the Commission.

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DECEMBER, 1932.

APPENDIX

Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U. S. Code, Title 15, Sec. 45), provides, *inter alia:*

> That unfair methods of competition in commerce are hereby declared unlawful.
>
> The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.
>
> Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may

make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such per-

son, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written peti-

tion praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

* * * * *

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In the

Supreme Court of the United States

October Term, 1932.

No. 393.

FEDERAL TRADE COMMISSION,
Petitioner,

vs.

ROYAL MILLING COMPANY, ET ALS.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

THOMAS H. MALONE,
Counsel for Respondents.

BAIRD-WARD—NASHVILLE

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I.

STATEMENT.

May It Please The Court:

The single question presented by the petitioner (Commission's Brief, p. 10) reduces the case to a narrow issue, and, from its standpoint, renders a full statement unnecessary.

It is, however, conceived that in view of this Court's power to examine the record for material facts not reported by the Commission (*Fed. Trade Commission* v. *Curtis Co.* (1923), 260 U. S., 568, 580; *Fed. Trade Commission* v. *Gratz* (1920), 253 U. S., 421, 427), it may be permissible to point out some additional facts, which (it is hoped) will be of assistance to the Court.

These facts are either included in the findings of the Court of Appeals (none of which are questioned in the petition), or are established by stipulation or by evidence which we regard as uncontroverted.

Additional Facts.

1. The competition involved in this case is not between makers of flour in the primary sense—i.e., grinders of wheat berries—but between makers of "self-rising" and "processed" flour. (Opinion, Rec., p. 902.)

Respondents do not deal in flour just as it comes from the grinding mill—"raw flour" as it is termed (Rec., p. 73) —nor are they in competition with anyone dealing exclusively in such flour (Rec., pp. 73, 74).

But respondents, or their predecessors in this business, many years ago put on the market and made popular a product known as "self-rising" flour. (Opinion, Rec., p. 902.)

2. "Self-rising" flour is made by machinery (Opinion, Rec., p. 902) and each of the respondents owns and operates a *bona fide* plant and machinery for carrying on the business. (Rec., p. 66, *et seq.*, p. 775 and exhibits mentioned, p. 887 and exhibits mentioned, p. 902.)

The question as to whether the operation is actually "milling" was said by the Interstate Commerce Commission in a former controversy between the "grinders" and the Nashville "manufacturers" to be "admittedly a close one, open to honest differences of opinion."

(*Nashville Flour Transit Rules* (1916), 41 I. C. C., p. 497.)

Certainly there is no case here of a merchant, without plant or machinery, who deceives the public by calling himself a "mill."

3. "Self-rising" flour is a commodity all ready for use by the housewife—that is to say, consists of flour, with salt,

soda, and phosphate added in the proper proportions, and scientifically mixed.

(Rec., p. 73, pp. 42-44, pp. 665, 666; Opinion, Rec., p. 902.)

Flour, in and of itself, is not an article fit for human consumption. (Rec., p. 43, p. 304.) It requires the addition of these leavening ingredients, in the proper proportion, and properly mixed with it.

"Self-rising" flour has two great advantages:

First: It is thoroughly and properly mixed according to exact proportions, instead of being compounded according to the rule of thumb methods which are apt to prevail in the kitchen. It produces a better food article. (Rec., p. 680, p. 82.)

Second: It is much cheaper for the housewife to buy this prepared commodity, than to buy separately flour, baking powder, and salt, from the retail grocer, paying a profit on each one. This saving is estimated in the present case by one witness as running from 80c to $4.00 per barrel of flour (Rec., p. 82), and by another as running from 40c to $2.15 per barrel, according to the quality of the baking powder and salt which the particular housewife might use. (Rec., p. 678.) This saving is, of course, produced by the fact that the makers of "self-rising" flour buy their leavening ingredients in car-load lots. (Rec., p. 678.)

4. The other product made by respondents and other Nashville producers is what is called for convenience "processed" flour—as to which the Court of Appeals said:

> "They (respondents) also market a commodity called 'processed flour.' This is a blend of two or more flours of different content with a small percentage of phosphate. Processed flour tends to counteract an overdose of soda in the hands of an unskilled housewife and restores to some extent the mineral content of the flour removed in the grinding process."
> (Opinion, Rec., p. 902.)

The addition of phosphate, for the above purposes, was a discovery of Mr. F. J. McCarthy, of Nashville,—a pioneer in the self-rising flour industry—made in 1908 (Rec., p.

70). This practice is now followed by the grinding mills. (Rec., p. 29, p. 330.)

By combining or blending two or more flours, selected according to distinct characteristics of the respective brands, a resultant flour is obtained which differs in its proportions from either of them. (Rec., p. 666, p. 72, p. 336.)

Two or more flours thus selected to produce a particular resultant, are put in the "batch mixer," together with one-half of one per cent of phosphate. This is then run through the batch mixer, draver, elevators, reels, spirals, etc., and through the packers into the bags. In other words, it is subjected to exactly the same process that is used in making "self-rising" flour—the difference being that phosphate is added instead of the leavening ingredients. (Rec., p. 666, pp. 70-72, p. 329.)

In this way respondents can produce a flour specially adapted to the making of biscuit and other hot breads.

5. The business of making "self-rising" flour was established in Nashville from small beginnings in the year 1897 (from three to five barrels per day), but has grown until the combined output of the original respondents in this proceeding, for the year 1929, exceeded $8,000,000.00.

(Rec., p. 108, p. 109, 41 I. C. C., p. 485; Rec., p. 24, p 737, p. 776, p. 813, p. 888, p. 852, p. 76.)

Nashville has become the center not of the *flour* industry in the South—but of the *self-rising* flour industry.

(Opinion, Rec., p. 902; Rec., p. 89.)

6. The grinding millers, strongly organized as the Southeastern Millers' Association (Rec., pp. 638-640, p. 669, Opinion, Rec., p. 904), are *merely the followers and imitators of respondents* and their predecessors in this industry. (Opinion, Rec., p. 903.)

"Self-rising" flour, in its early stages, was *bitterly opposed* by the grinding millers, whose salesmen claimed that it contained poisonous chemicals (Rec., p. 109, 41 I. C. C., pp. 485-6), and who made common cause with the jobbers and retailers. These latter classes opposed the product be-

cause they carried stocks of leavening ingredients,—baking powder, salt, etc.,—and made a profit on each (*Nashville Flour Transit Rules*, 41 I. C. C., pp. 485-486).

But after strongly opposing "self-rising" flour for some years, the grinding mills were finally forced by its popularity to install the necessary machinery and take up its manufacture.

(41 I. C. C., p. 485.)

7. Marketable "self-rising" flour cannot be made by the grinding miller with his grinding machinery (Rec., pp. 352, 353). It is impossible to put wheat berries and the leavening ingredients into the hopper and obtain self-rising flour. (Rec., p. 335, p. 668, p. 46, pp. 88, 89.)

Two operations are necessary. The grinding miller must first get his flour, and then, by other and additional machinery make the "self-rising" flour. (Rec., p. 335.) This latter process is the same as that used by respondents. As stated by the Court of Appeals:

> "The process used by the grinding mills is substantially the same as that of the petitioners (respondents), and requires substantially the same machinery and the same amount of time." (Rec., p. 902.)

If, therefore, the grinding millers are "manufacturers" of self-rising flour, it is hard to see why the title should be withheld from respondents, who are engaged in exactly the same operation.

8. Although insisting that they had a right to call themselves "manufacturers" of "self-rising" and "processed" flour, the respondents, before introducing any evidence, and for the purpose of cutting off any possibility of "deception," offered to place on their letter-heads, bags, and invoices, in conspicuous lettering, the words "NOT GRINDERS OF WHEAT." (Rec., pp. 684, 685, p. 20, p. 25, p. 732, p. 770, p. 808, p. 848, p. 883.)

As stated by the Court of Appeals:

> "Early in the proceedings the petitioners (respondents) offered by letter, and again in their amended answers, to add the phrase 'Not grinders of wheat' to their

> trade or corporate names, wherever used, 'to cut off the possibility of deceiving or misleading any purchaser or customer.' No attention was paid to the offer. . . ." (Rec., p. 903.)

It may be added that the Commission entered an order acknowledging receipt of this offer. (Rec., p. 22, p. 735, p. 811, p. 850, p. 885.)

9. It is deemed proper to call attention to another finding of the Court of Appeals, viz:

> "Some of the grinding mills *buy surplus flour from other grinding mills*, and when this is done the purchasers sell the flour *under their own labels*." (Rec., p. 903.) (Italics added.)

In the instant case, nine grinding millers or representatives of grinding mills testified (including Mr. McLemore, the Commission's chief expert), and clearly established the practice. This practice was also fully shown by testimony of flour brokers and by documentary evidence. (Rec., pp. 223, 227, 230, 234, 245, 248 and exhibits 6-13 and 14-18, pp. 249, 571, 572, 566, 625, 557-561 and exhibits 34-50, pp. 531, 535-541, and exhibits 19-28.)

To explain this practice:

There are some 12,000 grinding mills in the United States. To get the best results they must work on a 24-hour basis. This reduces the unit cost and makes a better grade of flour than if they should run 12 hours, and then begin next day with a cold mill. (Rec., pp. 41, 42, 173, 174, 230-233, 234-235, 567, 676-678.) Hence a grinding mill will often have a large surplus of flour which it can afford to sell at, or even below cost, to makers of "self-rising" flour like respondents, or to another grinding mill, in order to obtain the far greater advantage of a 24-hour shift. (Citations *supra*.) Again, the price of wheat may make it cheaper to buy than to grind. (See the calculation illustrating this, Rec., pp. 676-678). Or a hard wheat miller may need soft wheat flour for his customers.

Mr. Cowgill, a grinding miller, testifies:

> "Well, where we sell the hard-wheat miller, where he does not manufacture a soft wheat flour, he puts the

flour we manufacture for him under his mill brands and sells to his trade." (Rec., p. 234.)

The practice is so universal that the U. S. Census blank for grinding mills calls for a report as to "*flours purchased from other mills.*" (Rec., pp. 687-688, and exhibit 73.)

This is, of course, substantially the practice which the Commission has ruled to be deceptive in the case of respondents.

10. The grinding mills are the strongest competitors of respondents.

On this point the Court of Appeals said:

> "The petitioners' (respondents') product, and that of the grinding mills, *are in active competition* in the territory. There is also evidence that petitioners' (respondents') product for some time came into competition with the product of one or two concerns in the same business *which did not represent themselves as mills or milling companies.* This competition, however, was *never substantial,* and it is *doubtful* on the record *if it still exists.*" (Italics added.) (Rec., p. 903.)

There is, in other words, no substantial competition, except with competitors who pursue exactly the same methods as those used by respondents—there are 15 or 20 of these (Rec., p. 92)—and with the grinding millers, who as just shown, to a greater or less extent follow the practice of buying flour and putting it out under their own brands in interstate commerce.

11. The effect of the Commission's order, if enforced, would be *to stifle, rather than to promote, competition,* in this territory.

The Court of Appeals says:

> "There is here manifestly no threat to competition. Such effect as the Commission's orders may have upon the active competition that now exists will be in the direction of *stifling* rather than of preserving it. There

is no oppression of the weak by the strong, *the grinding millers being organized into powerful trade organizations*, and the record wholly fails to establish any injury to the public or any loss suffered by it, either individually or in the aggregate." (Italics added.) (Rec., p. 904.)

12. Another undisputed fact which appears in the record seems to throw some light on the present controversy.

In 1916 the Southeastern Millers' Association endeavored to obtain a ruling from the Interstate Commerce Commission, by which the *"milling in transit" privilege* on self-rising flour (enjoyed alike by the grinding millers and the Nashville producers) would be taken away from the latter. (Rec., pp. 60-63, pp. 668-669, pp. 671-673.)

Under this privilege flour brought in and processed could be shipped in less than car-load lots on the through rate to the Southeastern territory where most of the consumers were located. (Rec., pp. 671-673.) This was a valuable privilege, not only to the Nashville producers, but to the small dealers and consumers in that territory. (Rec., p. 85, pp. 672-673.)

In the trial of that case (*Nashville Flour Transit Rules*, 41 I. C. C., 483), evidence was introduced as to whether the making of self-rising flour was a "milling" process. (Rec., p. 669, p. 62.)

The Interstate Commerce Commission did not find it necessary to decide this point,—observing, however, that:

"The question of how it should be classified is admittedly a close one, open to honest differences of opinion" (41 I. C. C., p. 497).

But the Interstate Commerce Commission was impressed by a fact which seems to have escaped the attention of the Federal Trade Commission, viz, that the making of *self-rising* flour was "in all essential respects the same with the miller as the process by the so-called manufacturer" (41 I. C. C., p. 497).

Its decision was that it would be unjust discrimination for the carriers to give this privilege to the grinding millers while withholding it from the Nashville producers. (41 I. C. C., p. 497.)

The Interstate Commerce Commission further recognized that the proceeding *was essentially a contest between private competitors*, saying on this point:

> "It is obvious that in its last analysis this case represents a contest between what, for purposes of distinction, may be designated as the 'manufacturers' and 'millers' of self-rising flour, with the carriers divided and lined up some with each faction." (41 I. C. C., p. 487.)

It therefore seems reasonable to believe that the present cases are merely another phase of that contest, and that the Federal Trade Commission (whose good faith in the matter is not questioned) has been misled into taking part in another private controversy, just as it was in the *Klesner* case.

Findings unsupported by Allegations in the Complaints or by substantial Evidence.

Certain statements in the petition are based on findings of the Commission which are thought to be beyond the allegations of the complaints, when fairly construed, or unsupported by substantial evidence.

These will be mentioned in the argument which follows.

II.

ARGUMENT.

It is the contention of respondents:

1. That the case made in the Petition and Brief presents a new and different theory from that advanced in the complaints.

2. That the case now made by the Petitioner finds no support in the record:

(a) Because there is no charge in the complaints that many consumers prefer the products of the grinding mills to the similar products of respondents, and believe them to be better, etc.

(b) Because there is no substantial evidence to support the finding of the Commission in this behalf.

3. That the Court of Appeals correctly held that the Commission was without jurisdiction or power to make the orders in question, and correctly set them aside.

These contentions will be discussed in the order noted.

(A)

CHANGE OF POSITION.

In giving the substance of the case made by the complaints, it is said that the Commission alleged:

> "The use of these trade names and representations had the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flour to believe that they were buying direct from millers or manufacturers and to divert trade from competitors." (Petition, p. 2.)

This statement, by inadvertence, omits what seems to be an important factor.

The case actually stated in the complaints is that the use of these words ("Milling," "Mills," etc.) in the trade names, and "the representation in their business correspondence and otherwise as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of plain or self-rising flour to believe that in purchasing their products they are *buying direct from a miller or manufacturer of flour as above described and without the intervention of the middle man or any element of cost of a middle man's profit* (italics added) and induce purchasers (purchases) of their flour by dealers and *consumers* on that understanding and belief; and said representations constitute unfair methods of competition. . . ." (Italics added.) (Rec., p. 15.)

As will clearly appear, the theory here advanced is that the consumer is injured because he is misled as to the *price* —not because he gets a different article from the one which he wished to purchase.

This is deemed material because it seems to demonstrate that the original theory of "public interest," stated in the complaints, was merely an extension of the doctrine announced in *Federal Trade Commission* v. *Pure Silk Hosiery Mills* (C. C. A., 7, 1925), 3 Fed. (2d), 105 (and in a line of the Commission's own decisions), where it is held to be unfair competition for a merchant, having no plant or machinery of any kind, to describe himself as a "Mill," and to deceive the public by representations that he is engaged in actual manufacture, and *can, therefore, make a better price* than his mercantile competitors.

The theory advanced in the complaints attempted to extend this doctrine to a case *wherein the respondents were making the same article, and with the same machinery* used by their competitors, the grinding mills. (*Ante*, p. 5.)

The theory advanced in the complaints is that the consumer is "injured" because he thinks he is getting a better price.

But the contention which the Commission now seeks to maintain, in its petition and brief, is that the consumer is

"injured" *when he buys an article which he did not intend to buy*—although price and quality may be the same.

This Court has said that

> "the thing which may be prohibited is the *method of competition specified in the complaint.* Such an order should *follow the complaint;* otherwise it is improvident and, when challenged, will be annulled by the Court." (Italics added.)
>
> *Federal Trade Commission* v. *Gratz* (1920), 253 U. S., 421, 427.

The Court has further held that to justify the Commission in filing a complaint under Section 5 of the Act "the *purpose* must be the protection of the public," and that "the public interest must be *specific* and *substantial.*" (Italics added.)

> *Federal Trade Commission* v. *Klesner* (1929), 280 U. S., 19, 27, 28.

A "method of competition" is not within the scope of the Act unless it is such as to involve the "public interest."

> *Fed. Trade Commission* v. *Klesner, supra.*
> *Fed. Trade Commission* v. *Gratz, supra,* at p. 427.
> *Fed. Trade Commission* v. *Raladam Co.* (1931), 283 U. S., 643, 649.

Hence it is submitted that a vital element in charging an unfair method of competition is a showing of "public interest," and that the Commission should be confined to the allegation made on this point in the complaint.

The departure in the present case has just been shown. (*Ante,* p. 11.)

It is further submitted that this contention is not merely technical,—for there was not the slightest effort made to show that *any consumer* was misled by thinking that he or she was *getting a better price* in buying the respondents' products.

Not a single consumer was introduced to prove this.

The case made in the complaint having failed, it is submitted that a new case, based on a finding outside the complaint, should not be made here, to justify the Commission's orders.

(B)

NO ALLEGATION OR EVIDENCE TO SHOW THE "PREFERENCE" CLAIMED.

Assuming, for argument's sake, that the Commission is not precluded from advancing its present theory, we next submit that this theory finds no support in the record.

It is, of course, presumed that the Commission did not mean to present a mere abstract question for discussion. It is here to justify its orders, and to show that under the record they were erroneously set aside. (Petition, p. 7.)

Counsels' theory as to "public interest" assumes the existence of a valid finding, supported by allegation and proof, that "many consumers" (a substantial portion of the consuming public) *have a preference* as between the products of a grinding miller and the similar products of respondents, and *believe the former to be better than the latter.*

A finding in line with this theory was made (Rec., pp. 32-33), but it is respectfully submitted that it is not supported by allegation of the complaints or by substantial evidence.

1. No Allegation.

The essential allegations of the complaints have already been analyzed and shown to present merely the theory that consumers have been led to buy because they believed they were getting a better price, and eliminating a middleman's profit. (*Ante*, p. 11.)

There is (as we respectfully submit) not a suggestion in the complaints that consumers *prefer* to buy self-rising or processed flour from a grinding mill, or that they believe the flour so produced is a *better flour* than the product of these respondents.

2. No Proof.

But irrespective of this, it is submitted that there is a total lack of evidence to show a "preference" on the part of any substantial portion of the consuming public, as between "grinders" and "blenders," and that the Commission's finding on this point is wholly unsupported.

In *Federal Trade Commission* v. *Curtis Co.* (1923), 260 U. S., 568, 580, it was said:

> "Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence."

This power we now invoke.

The testimony of a great many dealers, wholesale and retail, was taken in this case, and conclusively establishes the proposition that *the general consuming public has no interest as to where the flour comes from*, or whether it is made by a "grinder" or a "blender," but buys flour altogether by brands, just as it buys soap, coffee, or any other standard article.

In support of this statement we ask leave to refer to the following evidence:

McBryar (dealer, Trenton, Ga., 11 years' experience), "Our customers call for it by the brands." (Rec., p. 384.)

Mobley (dealer, Jefferson, Ga., 32 years' experience), "Our customers are influenced by the quality and price just as we are."

> "Q. 30. And do they call for a particular brand?
>
> "A. Yes, sir.
>
> "Q. 31. In other words, the housewife buys flour and likes it, and then comes back and asks for that brand?
>
> "A. That is the idea." (Rec., p. 391.)

On cross-examination:

"X. 73. Does your trade know, Mr. Mobley, that it is buying flour from a blender rather than from a mill, when you sell them Watauga Milling Company's goods, or goods marked with the Watauga Milling Company's name?

"A. *I do not think that would influence them at all.*" (Rec., p. 397.)

Further testifies:

"X. 71. *Don't you know that some of your trade have quite a prejudice against what is termed blended flour?*

"A. *No, sir.*" (Rec., p. 397.)

The following colloquy sheds light on this point:

"EXAMINER SHEPPARD: Mr. Skillern, do customers ever come into your store and demand flour by the name of the manufacturer?

"A. No, sir.

"EXAMINER SHEPPARD: Or a blender, as the occasion might be?

"A. No, sir.

"EXAMINER SHEPPARD: *Are they interested as to who the manufacturer may be?*

"A. *No, sir; they just call for it by the name of the brand.*

"EXAMINER SHEPPARD: By the brand name?

"A. Yes, sir." (Rec., p. 507.)

(*Note*: Witness is a dealer in Summertown, Tennessee, with 16 years' experience.) (Rec., p. 507.)

In the testimony of *J. M. Whiteside*, a Mississippi merchant, doing an annual business of from one and a half to two million (Rec., p. 516), the following occurred:

"EXAMINER SHEPPARD: Just one question. I understand you have had a broad experience in selling groceries to the public?

"A. I have sold groceries for quite a while.

"EXAMINER SHEPPARD: What is your opinion as to whether or not the average customer who comes into your store for the purpose of buying flour, are they interested in the manufacturer or blender of the flour?

"A. No, sir. *The average customer don't know who makes the flour,* is my experience.

"EXAMINER SHEPPARD: He is interested in the brand?

"A. *He buys by the brand,* the brand that gives him satisfaction." (Rec., p. 519.)

So in the examination of *Roy McDonald,* manager of 41 chain stores in and near Chattanooga, Tennessee, doing an annual business of over a million and a half dollars (Rec., p. 529), the following took place:

"EXAMINER SHEPPARD: Just one question. From your experience in handling goods and the public, I want your opinion as to whether or not the public, the average customer, is interested in the manufacturer or mixer from whom the flour came?

"A. I think I am well qualified to answer that question. I started selling groceries when I was eleven years old. What time I was not in school you might say, I jumped counters selling groceries direct to the customer. I have been in what I would think was intimate contact with the customer, and have since tried to maintain that contact. *The customer is merely interested in the satisfaction which she gets from the sack of flour,* which they bought. *They may buy one sack of flour and try a brand, and if it is satisfactory they will come back for it.* My private brand of flour, and which I naturally want to maintain on a high standard of quality, if the sack of flour does not come up to their expectations regardless of what the reason is, *they will not buy that sack of flour a second time. . . .*" (Witness then tells of the guaranty which he makes in selling flour.) (Rec., p. 530.)

To the same effect see the testimony of the following witnesses:

Sherrill, dealer, Hartselle, Ala., 30 years experience (Rec., p. 405).

Cannon, dealer, Spartanburg, S. C., 23 years experience (Rec., pp. 409-410).

Hughes, dealer, Huntsville, Ala., 5 years experience (Rec., p. 413, "By the brand").

Lisle, dealer, Opelika, Ala., 8 years experience (Rec., p. 422, "By name, by brand").

Jackson, dealer, LaGrange, Ga., 4 years experience, ("By brand, as for Clover Leaf, Silver Dawn, *as if asking for Maxwell House or Arbuckle's Coffee*"). (Rec., p. 426.)

Bryant, dealer, Collinwood, Tennessee, 2 years experience (Rec., p. 445), ("They just come in and ask for the name of the flour.")

Rogers, dealer, Nashville, Tennessee, 4 years experience (Rec., p. 449).

Rottero, dealer, Nashville, Tennessee, 17 years experience (Rec., p. 455). ("The name of the flour").

Campion, Rec., p. 461, Manager Piggly-Wiggly Stores, Nashville, Tennessee, 8 years experience ("Particular brands").

Coode, Rec., p. 466, former President National Association of Retail Grocers, dealer, Nashville, Tennessee, 39 years experience ("Specify the brand name").

Schutt, dealer, Nashville, Tennessee, 34 years experience, Rec., p. 470 ("Call for the brand they want").

Hall, dealer, Birmingham, Ala., 9 years experience, Rec., p. 473 ("Ask for it by name").

Gupton, dealer, Nashville, Tennessee, 10 years experience (Rec., p. 480).

Schafer, dealer, Little Rock, S. C., 20 years experience, Rec., p. 489 ("By brand, as for soap, coffee, or canned goods").

Bannon, dealer, McEwen, Tennessee, 7 years experience, Rec., p. 493 ("Just like they ask for Octagon Soap, Arbuckle's Coffee, and things like that").

Murff, dealer, Ashland City, Tennessee, 24 years experience, Rec., p. 498 ("By name").

White, dealer, St. Joseph, Tennessee, 8 years experience, (Rec., p. 503 ("By name, practically all of them").

Clayton, dealer, Lawrenceburg, Tennessee, 20 years experience, Rec., p. 513 ("Ask certain brands").

Hensley, dealer, Iron City, Tennessee, 6 years experience, Rec., p. 521 ("For certain brands").

Culpepper, dealer, Meridian, Miss., 8 years experience, Rec., p. 527 (Annual business $600,000—"by brand, as a rule").

Cassels, dealer, Ellinton, S. C., Rec., p. 579 ("Give me a sack of good flour").

Lovingood, dealer, Murphy, N. C. (Rec., p. 586).

Walker, dealer, Andrews, N. C., 6 years experience (Rec., pp. 587-588).

Ketner, dealer, Waynesville, N. C., 25 years experience (Rec., pp. 592-593).

Williams, dealer, Greenbrier, Tennessee, 15 years experience, Rec., p. 597 ("By the brand").

Murphee, dealer, Nashville, Tennessee, 17 years experience, Rec., p. 608 ("Some by name, some for good flour").

Bumpus, dealer, Nashville, Tennessee, 7 years experience, Rec., p. 610 ("By the name").

Sneed, dealer, Nashville, Tennessee, 16 years experience, Rec., p. 612 ("Some for good flour, most for a brand").

Vantrease, dealer, Nashville, Tennessee, 2 years experience (Rec., p. 615).

Gower, dealer, Nashville, Tennessee, 30 years experience (Rec., p. 617).

Smotherman, dealer, Nashville, Tennessee, 12 years experience, Rec., p. 619 ("Some for good flour, some by name").

Fehr, Rec., p. 622, President Nashville Retail Merchants' Association, 13 years experience ("Usually by the brand").

Pardue, dealer, Nashville, Tennessee, 10 years experience, Rec., p. 624 (Particular brands, or sack of good self-rising or plain flour).

Not a single dealer was put on the stand by the Commission to rebut this evidence.

Evidence of Consumers.

In line with this testimony of dealers, respondents introduced *ten Nashville housewives*, all of whom testified that they bought flour *by the brand.* (Rec., p. 547, p. 550, p. 551, p. 552, p. 553, p. 554, p. 555, p. 556.)

Only one of these was cross-examined at any length, and she testified on the question of preference:

> "X-10. Have you not *any preference* as to whether or not you would rather have flour made by a blender as I have described to you or from a concern that actually grinds the wheat into flour?
>
> "A. *I do not know that I know the difference.*
>
> "X-11. Who makes 'Queen of the Pantry'?
>
> "A. I do not know.
>
> "X-12. Do you know who makes 'Gloria' flour?
>
> "A. No, sir.
>
> "X-13. Do you know who makes any of them?
>
> "A. No.
>
> "X-14. Do you know what name appears on the sacks?
>
> "A. Yes.
>
> "X-15. What names?
>
> "A. 'Martha White,' 'Gloria,' 'Queen of the Pantry.'
>
> "X-16. Does the name of the manufacturer making the flour appear on the sack or do you know?
>
> "A. I just don't know." (Rec., pp. 549-550.)

The Commission introduced three consumers (Nashville women), but *only one was asked as to her preference.* This was Mrs. *Canfield,* who says—not that she has a preference—but

> "I should *think* it *would be* better to buy from the mills that grind it." (Rec., p. 285.)

But almost immediately afterward:

> "Q. Do you know, Mrs. Canfield, that there was *any such thing* in the flour industry *as a blender?*
>
> "A. *No, sir.*" (Rec., p. 285.)

Thus the lady could have had no preference—for she did not know the difference between them.

This was absolutely demonstrated, because she said she used four kinds of flour, "Flora," "Martha White," "Gloria," and sometimes "Polly Rich" (Rec., p. 285), and that all of them have been satisfactory (Rec., p. 286).

Two of these ("Gloria" and "Martha White") are made by respondents, and the third ("Polly Rich") was introduced and made popular by a "blender." (Rec., p. 601.) Yet witness was using them all with perfect satisfaction.

It is therefore respectfully submitted that if all questions of pleading are laid aside, *there is no evidence at all* —much less any substantial evidence—to support the Commission's finding, and its present theory. All the evidence is the other way.

Commission's Theory Impossible.

This uncontradicted evidence, it is submitted, is in line with reason and common sense.

There is no theorizing about an article of food, provided it is wholesome. People eat what they like; and a regiment of cereal chemists would waste their time in demonstrating to a housewife that "Queen of the Pantry" flour makes better biscuit, when she and her family prefer "Martha White."

It is admitted that all brands are wholesome; and consumers buy the particular brands which appeal to their individual tastes.

A different rule may possibly obtain with regard to shoes, or cosmetics, or clothing, where other considerations—elements of beauty, fashion, etc.—may enter into the case.

But there can be no abstract or theoretical preference about a biscuit.

(C)

THE ORDERS WERE PROPERLY SET ASIDE.

In the Court's latest opinion it was said:

> "By the plain words of the act, the power of the Commission to take steps looking to the issue of an order to desist depends upon the existence of three distinct prerequisites:
>
> "(1) That the methods complained of are *unfair;* (2) that they are methods of *competition* in commerce; and (3) that the proceedings by the Commission to prevent the use of the methods appears to be the *interest of the public*" (Court's italics).
>
> *Federal Trade Commission* v. *Raladam Co.* (1931), 283 U. S., 643, 646-647.

The present petition deals only with the last mentioned element—and without conceding that the first two elements of jurisdiction have been established (for we do not believe this to be true), we shall address our argument to the third requisite.

AS TO "INTEREST OF THE PUBLIC."

It is respectfully submitted that the Federal Trade Commission cannot bring these cases here merely because the Court of Appeals may have made an erroneous statement.

It is here seeking a reversal of that Court's decree, and a reinstatement of its own orders (Petition, p. 7)—not to have a mere declaration of rights.

To sustain these orders here, the Commission must affirmatively show that the public interest is involved. (*Fed. Trade Commission* v. *Raladam Co., supra,* at p. 649.) It has accordingly advanced such a theory, and we have endeavored to show that it is without basis in the record. (*Ante,* p. 13, *et seq.*)

If we are correct in this, *the Commission's present contention involves merely an abstraction.*

We are, nevertheless, convinced that even as to this abstract legal proposition, the contention made by the Commission is untenable.

The test, as we see it, is this:

The public interest is not involved so as to give the Federal Trade Commission jurisdiction, unless the public is "*injuriously*" affected. Such interest cannot be merely fanciful or theoretical. It must be "specific and substantial." (*Fed. Trade Commission* v. *Klesner*, 280 U. S., at p. 29; *Fed. Trade Commission* v. *Raladam Co.*, 283 U. S., at p. 649.)

In the instant case there can be no real and substantial interest in the consuming public, when it buys altogether by brands—neither knows nor cares who makes the article,—and where the commodity, whether made by the so-called "miller" or the so-called "blender," is essentially the same, and is sold strictly on its merits, as developed by the most practical and convincing of all tests.

This, as we have endeavored to show (*Ante*, p. 20), is inevitably true in the case of a food article like flour, but it is believed that the same rule—viz, that the public must be "injuriously" affected—should obtain in all cases.

All the opinions of the Court, as we interpret them, are consistent with this contention.

Thus in *Federal Trade Commission* v. *Winstead Hosiery Co.* (1922), 258 U. S., 483, the complaint was sustained because there was a direct injury to the consuming and purchasing public. Goods were branded "Natural Merino," "Gray Wool," "Natural Worsted," or "Australian Wool," much of which "contains only a small percentage of wool; some as little as ten per cent." (P. 490.) As a result of this, the public was misled "*into buying, as all-wool, underwear which is in large part cotton.*" (P. 492.) (Italics added.)

Or, as explained in the *Klesner case*, "an unfair practice was suppressed because it *affected injuriously* a substantial part of the purchasing public." (280 U. S., p. 28.)

And in the *Raladam Company* case: "Part of the public was thereby misled into selling or into buying, as all wool, underwear which was in large part cotton. The labels were false, and calculated to deceive, and did, in fact, deceive, a substantial part of the purchasing public." (283 U. S., p. 651.)

The actual injury involved seems too apparent for discussion.

In the *Raladam Company* case, *supra*, the Court (as we interpret its opinion) thought that the element of public interest was present because of *possible physical injury* to users of the patent medicine. Thus it was said:

> "Findings, supported by evidence, warrant the conclusion that the preparation is one which cannot be used generally *with safety to physical health* except under medical direction and advice. If the necessity of protecting the public *against dangerously misleading advertisements* of a remedy sold in interstate commerce were all that is necessary to give the Commission jurisdiction, the order could not be successfully assailed. (283 U. S., p. 646). (Italics added.)

In the *Klesner* case, *supra*, as the Court was careful to point out:

> "It is not claimed that the article supplied by Klesner was *inferior* to that supplied by Sammons, or that the public suffered otherwise *financially* by Klesner's use of the words 'Shade Shop.'" (280 U. S., p. 28.) (Italics added.)

So in a case under the other phase of the Federal Trade Commission Act, the Court said that the acquisition of stock in a competitor must affect competition "to such a degree as will *injuriously affect the public.*" (Italics added.)

> *International Shoe Co.* v. *Fed. Trade Commission* (1930), 280 U. S., p. 298.

It is, therefore, submitted that the language of the lower Court here criticized by the Commission, is in line with the opinions of this Court.

Decisions of the Courts of Appeal.

It is believed that the insistence of respondents is further supported by the best considered cases in the Courts of Appeal.

Petitioner seems to lay stress on a statement made in the case of *Ohio Leather Co.* v. *Federal Trade Commission* (C. C. A., 6, 1930), 45 Fed. (2d), 39, 41; but the actual decision was that the case must go back for further evidence and findings as to whether the purchasing public was *"misled to its prejudice."* The Court said:

> "Upon this subject—what the retail shoe buying public understands by 'kid,' and whether it is, in fact, *misled to its prejudice* by the use of this term 'Kafer-Kid'—the record is very unsatisfactory; and we think no final disposition of the controversy should be based upon it. The order cannot be sustained in the absence of an affirmative finding, based upon substantial evidence, to the effect that the consuming public, asking for kid shoes, *desires to get shoes made from the skin of a kid or goat*, as the case may be. The present record being insufficient, it should be remanded, in order that all parties interested may take further proofs and have a finding made, if indeed, the proofs may then justify any definite conclusion." (P. 41.) (Italics added.)

The Court then observes, *arguendo:*

> "The misleading of the ultimate public to its prejudice does not, of course, depend upon whether the substitute is equally as good as the original; the purchaser is entitled to get what he asks for, even if he is put off with something as good or better. . . ." (P. 41.)

As to this case, it is submitted:

(a) That the opinion of the same Court in the instant case is, of course, a later decision, and shows that the Court of Appeals did not regard the *Ohio Leather Co.* case as controlling this case.

In the *Ohio Leather Co.* case *calf* skin was sold for *goat* skin—two articles entirely different in the raw material,

however much the finished products made from the two might resemble each other.

(b) The observation, as broadly construed by the Commission, is in conflict with previous opinions of the same Court.

In the case of *L. B. Silver* v. *Fed. Trade Commission* (1923), 289 Fed., 985, it was shown that L. B. Silver and his successors in business had openly and persistently, for half a century prior to the filing of the complaint by the Commission, claimed that the "Ohio Improved Chesters" were a different breed of hogs from "Chester White."

After touching on certain other phases of the matter, the Court said (p. 989):

> "Aside from these considerations, it is apparent from the evidence in this case that *this controversy does not vitally concern the general purchasing public.* On the contrary, *it is a controversy largely between rival breeders of hogs,* or more particularly between rival hog breeders associations having and maintaining herd books. If the O. I. C. hogs were *inferior* to the Chester Whites and not of their breed and the petitioner advertised them as Chester Whites, such practice would, no doubt, constitute unfair competition as against Chester White breeders; but it is admitted that not only are the O. I. C. hogs *superior* to the Chester White hogs of 1863, but that they are the *equal* of the Modern Chester Whites. That being true, *it necessarily follows that neither the general public as consumers nor the small part of the public engaged in the breeding of swine and particularly in the breeding of O. I. C. and Chester White swine can be misled to their prejudice by this claim of the petitioner, nor induced thereby to purchase a hog inferior to the Modern Chester White* . . ." (Italics added.)

Again, in the case of *Berkey & Gay Furniture Co.* v. *Federal Trade Commission* (C. C. A., 6th, 1930), 42 Fed. (2d), 427, the Commission filed its complaint against a furniture manufacturer, alleging that veneered furniture was sold as solid mahogany or solid walnut. (P. 428.)

It was disclosed by the record "without dispute" that the finest modern furniture having exposed flat surfaces (tables, desks, etc.), is constructed "of laminated wood, with the grains of the various layers running in different directions so as to prevent cracking and warping, and with a layer of walnut or mahogany veneer secured to the exposed surface." The Court further says that "such is the only practical way of constructing flat surfaces of large area, and all of the beautiful effects of matched graining may be obtained only in this manner." It was also disclosed by the record that "all furniture of the better quality has its flat surfaces constructed of ply wood, or laminated and veneered woods, and that only the cheaper and poorer grades of less valuable material are constructed of solid wood." (P. 429.) It appeared that the respondent in its catalogues and "tags" was accustomed to describe such furniture as "mahogany" or "walnut," and one of the points discussed was whether this gave retailers an opportunity to *deceive the purchasing public.* As to this the Court said:

> ". . . To all but the grossly uninformed of the public it has no such tendency. It does not reasonably follow that, even as to this small fraction of the uninformed, the ignorance and mistake, *which results in their getting a better article,*—a more beautiful, more durable and more serviceable piece of furniture,—should be characterized as deception, fraud, or even unfairness, or that *injury to the public interest* is thereby shown." (P. 430.) (Italics added.)

The public may have been "deceived," but it could not have been "injuriously affected" by purchasing a superior article.

In this connection it is submitted that the mere fact that customers are *deceived* is *not* sufficient to show public interest.

> "This requirement" (*i. e.*, public interest) "is not satisfied by proof that there has been *misapprehension and confusion* on the part of purchasers, or even that they have been *deceived,*—the evidence commonly adduced by the plaintiff in 'passing off' cases in order to establish the alleged private wrong." (Italics added.)
>
> *Fed. Trade Commission* v. *Klesner,* 280 U. S., p. 27.

The above observation in the *Klesner* case seems a sufficient answer to *Federal Trade Commission* v. *Balme* (1928), 23 Fed. (2d), 615, 620, from which an excerpt is quoted in Petitioner's Brief (p. 12).

That case (it is submitted) was treated by the Court of Appeals for the Second Circuit as if a trade-mark case and a case under the Federal Trade Commission Act were governed by precisely the same principles; and most of the authorities reviewed relate to trade-marks, or unfair competition in equity. Thus it was said:

> "The inquiry is whether there is actual confusion, which is brought about by the simulation of one person's goods for another." (23 Fed. (2d), p. 621.)

This is certainly *not* the inquiry in a Federal Trade Commission case, where "to justify the Commission in filing complaint under Section 5, the *purpose* must be protection of the public. The protection thereby afforded to private persons is the *incident*." (Italics added.)

(*Fed. Trade Commission* v. *Klesner, supra*, at p. 27.)

The *Balme* case apparently construed *Fed. Trade Commission* v. *Winstead Hosiery Mills* as a mere case of *misbranding* (p. 620)—but any such view seems wholly inconsistent with the subsequent explanation of this Court in the *Klesner* case (*Ante*, p. 22), and its opinion in the *Raladam Company* case, (283 U. S., at p. 649).

The other cases cited by petitioner—*United States* v. *95 Barrels of Vinegar* and *Pillsbury* v. *Pillsbury Washington Flour Mills* (Petition, p. 13)—arose respectively under the Pure Food and Drugs Act and under the equity law of unfair competition, and this alone would seem enough to distinguish them.

In the first case, this Court said:

> "The statute applies to food, and the ingredients and substances contained therein. It was enacted to enable purchasers to buy food for what it really is." (265 U. S., p. 443.)

And further:

> "If an article is not the identical thing that the brand indicates it to be, it is misbranded." (265 U. S., p. 444.)

The case, therefore, was decided under the precise and unyielding terms of the Pure Food Act.

The excerpt made from the *Pillsbury Flour case* (Brief, pp. 13-14), was merely a dictum; for the Court, in the next sentence, went on to say:

> "We are forced to believe that appellants have put on the market *an inferior brand of flour* (Italics added), and in order to dispose of it profitably to themselves have placed upon it this false and simulated brand. . . ." (64 Fed., p. 848.)

And further:

> "They appeal to the greed of their customers to purchase *an inferior quality of flour* (Italics added), thus falsely branded with the name of a superior article. . . ." (64 Fed., p. 849.)

In the present case it is *conceded* in stating the question presented for decision, *that there is no finding or proof of inferiority.* (Commission's Brief, p. 10.) It may be added, that there is *no such charge in the complaints.*

It is, therefore, respectfully submitted that if there were any evidence at all to show the alleged preference of the consuming public—and there is none—the abstract principle for which the Commission contends is unsound; and that a mere deception—a theoretical injury, as distinguished from a physical or financial injury—is insufficient to sustain jurisdiction under Section 5 of the Act.

CONCLUSION—OTHER POINTS ANSWERED.

In concluding the argument, certain other points made by the petitioner will be briefly discussed.

1. Private Controversy.

It is said in the Petition (p. 9) that the *Klesner* case cannot apply, because (a) the respondents' representations do not involve any private rights, and (b) because that case "involved a controversy between two competitors of an essentially private nature."

(a) As to the first proposition the petitioner relies on *Royal Baking Powder Company* v. *Federal Trade Commission* (C. C. A. 2nd, 1922), 281 Fed., 744, 750.

The Court of Appeals in that case apparently construed the opinion in *Federal Trade Commission* v. *Winstead Hosiery Co.*, 258 U. S., 453, as conferring jurisdiction on the Commission in any case of misbranding, or deceptive labeling. Thus it is said, after reviewing that case:

> "The labeling of commodities in such way as to deceive the public is an unfair method of competition." (281 Fed., 752.)

We do not understand that subsequent opinions of this Court (and especially *Federal Trade Commission* v. *Klesner*, and *Federal Trade Commission* v. *Raladam Co.*), sustain such an interpretation of the Act.

There may even be cases where customers are *deliberately deceived* by falsely representing goods as those of a competitor, and yet the Commission may be without jurisdiction. This was the decision in *Federal Trade Commission* v. *Klesner, supra.*

(b) As to the second point:

We are unable to perceive that *Federal Trade Commission* v. *Klesner* is based on geographical limitations, or on the number of competitors involved.

There is certainly a purchasing public to be protected in the District of Columbia. And if the decision rests merely

on the fact that only two competitors were involved (who had engaged in a previous suit), why did the Court lay down the general rules already quoted? And why has the case since been treated by the Court as establishing these general principles?

It is submitted that the Court of Appeals correctly held that this was essentially a private controversy between two groups—the organized millers on the one hand and the Nashville producers on the other—just as the Interstate Commerce Commission had previously held in the "Milling in transit" case (*Ante*, p. 9).

2. As to Respondents' Offer.

Early in the proceeding the respondents offered to place in conspicuous lettering on all bags, containers, letterheads, etc., the words "NOT GRINDERS OF WHEAT." (*Ante*, p. 5.)

As to this the petitioner says that if they falsely labelled themselves as mills "there would be no reason for permitting the misrepresentation followed by a disavowal." (Brief, p. 15.)

This, of course, ignores the element of good will under these trade names, built up over a long series of years during which nobody questioned the right to use them.

Royal Milling Company, for example, was established under the name in *1902* (Rec., p. 23), long before the grinding mills had entered into the "self-rising" flour business, and while they were still opposing the product (*Ante*, pp. 4-5). It is stipulated that the present proprietors paid $7,500.00 for the good will in *1917*. (Rec., p. 23.)

Nashville Roller Mills, a corporation, was established in *1905* as a wheat grinding mill, and when its plant was burned in 1913, it was rebuilt as a self-rising flour plant. (Rec., p. 714.)

Naturally all the respondents wish to preserve their good will.

While no decision of this Court has been found, it has been held in the lower Federal Courts, that the use of such explanatory words permits the use of a trade name or trade mark which might otherwise be deceptive.

N. Fleugelman & Co. v. *Federal Trade Commission* (C. C. A., 2, 1930), 37 Fed. (2d), 59, 61.

(Right upheld to use the word "Satin-Maid" as a trade mark on products in fact made from cotton, where there appear in equally conspicuous lettering the words "a cotton fabric," "a cotton satin," "*no silk*," or equivalent modifying terms.)

Federal Trade Commission v. *Cassoff* (C. C. A., 2, 1930), 38 Fed. (2d), 790, 791.

(Manufacturer labelled his products "White Shellac," and "Orange Shellac," but stated on labels and advertising matter: "This is not 100 per cent India Shellac, it is composed of substitute Shellac and India Shellac.")

And see *Federal Trade Commission* v. *Goodgrape Co.* (C. C. A., 6, 1930), 45 Fed. (2d), 70, 72.

(Company ordered to desist from use of words "Goodgrape" or "Grape," "unless in the same connection it is made prominently to appear that the product is an imitation artificially colored and flavored.")

No authority is cited by the Commission for its present position, and so far as we can find, none exists.

3. Conduct of Competitors.

In *Federal Trade Commission* v. *Raladam Co., supra*, the Court said:

> "The Court below thought that the trade to be protected 'was that legitimate trade which was entitled to hold its own in the trade field without embarrassment from unfair competition.' There is much force in this conception of the act, and the language just quoted from the *Winsted* case seems inferentially to lend it support. Certainly, it is hard to see why Congress would set itself to the task of devising means and creating

> administrative machinery for the purpose of preserving the business of one knave from the unfair competition of another." (283 U. S., p. 652.)

While we do not think that the Court's very expressive and pungent phrase applies to either faction in this case—for the record shows no *injurious* deception by either—yet both are in the same situation.

The grinding millers, as previously shown (*Ante*, p. 6), are very generally engaged at times in the same practice which the Commission says is deceptive in the case of respondents.

When grinding mills competing in this very territory are buying flour and putting it out under their own brands (Rec., pp. 247-249, pp. 571-572, p. 566, pp. 557-558, *Ante*, p. 6, *et seq.*), it would seem difficult to justify the Commission's action in ordering respondents to give up their long established trade names for the sole benefit of such competitors.

4. No Injury to Competition shown.

In affirming the case of *Raladam Company* v. *Federal Trade Commission* (45 Fed. (2d), 430), this Court stressed the necessity of injury to legitimate competition.

> (*Fed. Trade Commission* v. *Raladam Co.*, 283 U. S., pp. 647, *et seq.*)

The Court of Appeals, as previously shown, made a strong finding on this point (Rec., p. 903, 904, *Ante*, p. 7, p. 8), and reached the conclusion that the Commission's orders, if carried out, would stifle rather than promote the existing active competition. (Citations, *supra.*)

Flour is purchased almost exclusively by brands (*Ante*, p. 14), and there is no attempt to show that respondents are imitating the brands or containers of the grinding millers.

Certainly it is not a case (as the Court of Appeals points out), of protecting the weak against the strong. Indeed, the shoe would seem to be on the other foot, when the powerful organization of the grinding mills is considered. The Commission seems bent on protecting the strong, and that

too, when they are merely the *imitators and followers* in the competitive field. (*Ante*, p. 4.)

These cases, it is submitted, are not only without the letter, but without the spirit, of the Federal Trade Commission Act.

The purpose of the Act, as just shown, is to encourage competition, and to prevent monopoly.

The Nashville producers and their predecessors, in making what was essentially the public's fight—a fight for a better product at a reduced cost—were first attacked by a campaign of misrepresentation (*Ante*, p. 4), and then by the powerful Southeastern Millers' Association in the "Milling in transit" case (*Ante*, p. 8), but without success.

If the decision of the Court of Appeals should be reversed, and the Commission's orders re-instated, it will necessarily injure the respondents financially, and do much to take away their prestige as competitors.

Cui bono?

The answer is not far to seek: For the sole benefit of a powerfully organized commercial body, and to the ultimate injury of existing competition and of the consuming public.

Respondents ask that the writ be denied.

Respectfully submitted,

THOMAS H. MALONE,
Counsel for Respondents.

October, 1932.

FILE COPY

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In the

Supreme Court of the United States

October Term, 1932.

No. 393.

FEDERAL TRADE COMMISSION,
Petitioner,

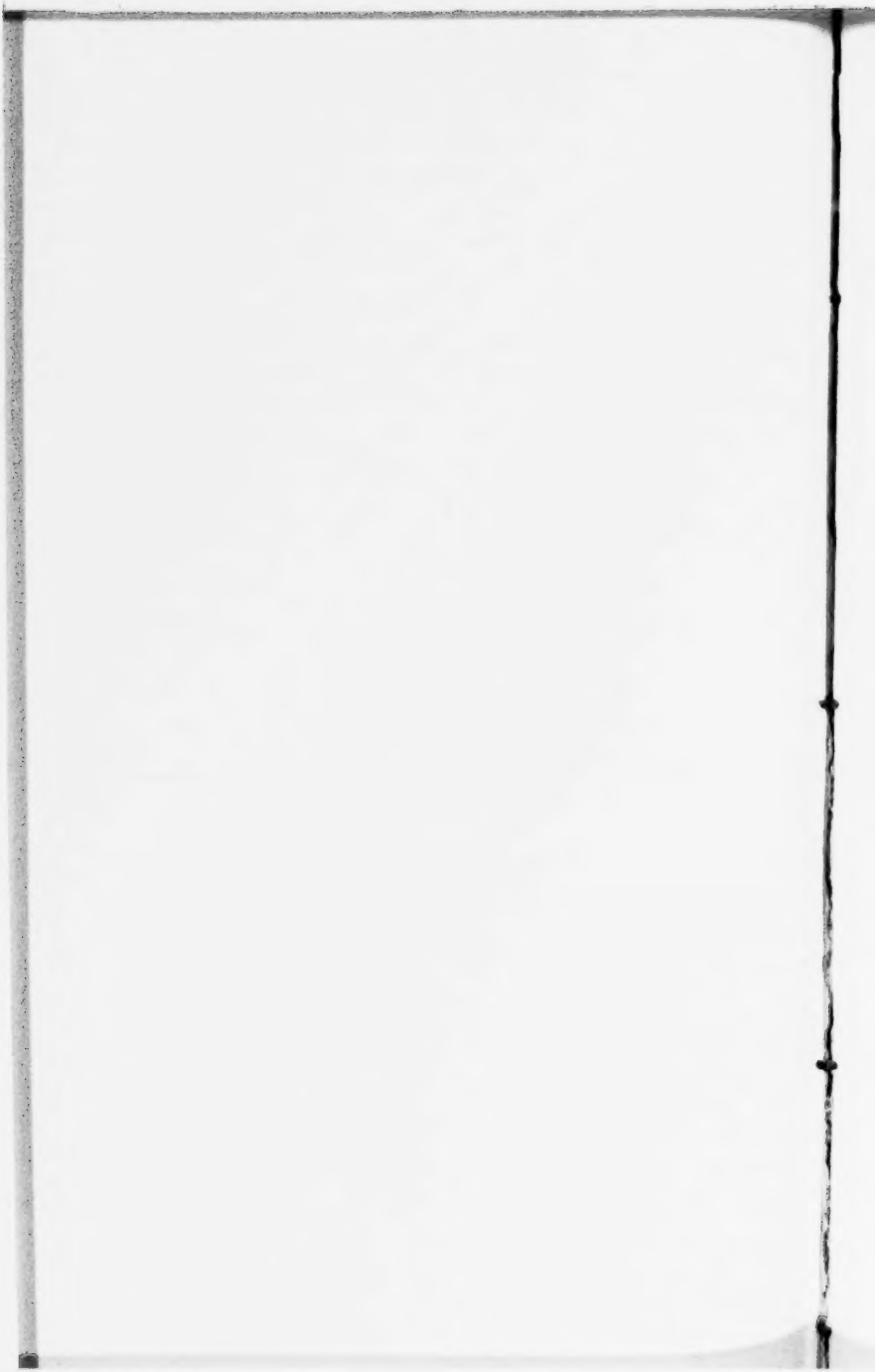
vs.

ROYAL MILLING COMPANY, ET ALS.,
Respondents.

BRIEF FOR RESPONDENTS.

THOMAS H. MALONE,
Counsel for Respondents.

BAIRD-WARD—NASHVILLE



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BRIEF FOR RESPONDENTS.

I.

STATEMENT.

May It Please the Court:

In the original brief, opposing the granting of the writ of *certiorari*, a full statement of the case, from the standpoint of respondents, was made, and in the interest of brevity we shall ask leave to make reference to this.

Background of the Case.

It is conceived that every case arising under the Federal Trade Commission Act is, to a considerable extent, if not primarily, a problem in economics. The practical, rather than the theoretical, side is to be considered.

In the words of this Court:

> "The paramount aim of the Act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree. . . ."
>
> *Fed. Trade Commission* v. *Raladam Co.* (1931), 283 U. S., 643, 647-648.

It will not be denied that the present record shows *the keenest form of competition* between the grinding millers, on the one side, and the Nashville manufacturers on the other.

The Court below found that:

> "The petitioners' product, and that of the grinding mills, are in active competition in the territory." (Rec., Vol. II, p. 190.)

And further:

> "There is here manifestly no threat to competition. Such effect as the Commission's orders may have upon the active competition that now exists will be in the direction of stifling rather than of preserving it." (Rec., Vol. II, p. 191.)

The witness *Vernon S. Tupper*, General Manager of respondent Nashville Roller Mills, testified:

> "The competition is about the hardest imaginable." (Rec., Vol. I, p. 673), and again, that it is "very keen, almost vicious." (Rec., Vol. I, p. 679.)

On cross-examination of this witness it was developed that his net profit for 1929 on 315,596 barrels of flour and a gross business of $2,170,036.01 was approximately $30,000.00, or "less than ten cents a barrel"—leading to the following colloquy:

> "MR. BANE: A very close profit.
> "A. Very close.
>
> "MR. BANE: And very close selling.
> "A. So close as to make it always uncomfortable to do any business." (Rec., Vol. I, p. 683.)

It seems, therefore, apparent, that there is no restriction of competition in any substantial degree under the present status, and it is further submitted that under such circumstances the Court below very properly refused to disturb the existing conditions.

It is further conceived that the facts leading up to the existing situation shed light on the present controversy, and may be of interest to the Court.

The early history of the contest between the grinding millers and the Nashville manufacturers is fully stated in the case of *Nashville Flour Transit Rules* (October, 1916), which is referred to in the Commission's last brief under the title *Freight Bureau* v. *Southern Railway Co.*, and which is reported in 41 I. C. C., 483.

This opinion was offered in evidence as an exhibit, but was withdrawn on the statement of counsel for the Commission that: "The Commission will take judicial notice of the decision" (Rec., Vol. I, p. 62). Afterwards, certain excerpts were read into the record (Rec., Vol. I, pp. 667-669). The Commission's witness McCarthy took an active part in that proceeding (Rec., Vol. I, p. 62), and so did the respondents' witness Tupper (Vol. I, p. 669), and these two witnesses were examined with regard thereto.

(Rec., Vol. I, pp. 59-63, pp. 667-672, pp. 694-697.)

While the statements of fact made by the Interstate Commerce Commission may not be evidence in the technical sense, we think they will not be questioned as being historically accurate. The record, in connection with this opinion, shows the facts now to be stated.

In 1898, and prior thereto, the situation in the section known as the "Southeastern territory" was this:

There were and are comparatively few grinding mills in the South—"the South is a consuming section, has no flour mills. . . ." (Rec., Vol. I, p. 85.)

The grinding mills sold flour in carload lots to the jobbers (Rec., Vol. I, p. 48, 41 I. C. C., p. 487), who in turn sold to the retailers.

The jobbers also sold salt and baking powder to the retailers (41 I. C. C., pp. 485-486).

Thus the jobbers made a profit on all these commodities, and so did the retailers, at the expense of the consuming public.

In 1898, the Ford Flour Company of Nashville began in a very small way (3-5 barrels daily output) the manufacture of "self-rising flour"—that is to say flour properly mixed with the leavening ingredients (Rec., Vol. I, p. 108, 41 I. C. C., p. 485).

This new business gradually increased in size, but from the outset encountered strong opposition—(a) from the grinding mills, (b) from the jobbers, and (c) from the retailers (41 I. C. C., pp. 485-486, Rec., Vol. I, p. 108, p. 109).

The reason, of course, was because this new commodity interfered with the profits which they were exacting from the public on flour, baking powder, and salt.

The claim was made by the grinding millers' salesmen that self-rising flour contained poisonous chemicals (41 I. C. C., p. 485), and even today there are people in Nashville who believe this. (Rec., Vol. I, p. 109.)

About 1908, the Nashville railroads granted a "milling in transit privilege" on self-rising flour (41 I. C. C., p. 486) —that is to say flour brought in, and manufactured into self-rising flour, could be shipped on the through rate, in less than carload lots to the Southeastern territory. (41 I. C. C., p. 487.)

In this way the Nashville producers (several plants had by this time been established) could make "drop shipments" to the small retailer who could buy only 2-5 barrels at a time (Rec., Vol. I, p. 85).

In addition to the saving on freight, which lowered the price to the consumers (Rec., Vol. I, p. 671, p. 85), there was a distinct saving—estimated by one witness as being from 40 cents to $2.15 per barrel (Rec., Vol. I, p. 82), and by

another as being from 80 cents to $4.00 per barrel (Rec., Vol. I, p. 678)—according to the quality of the baking powder and salt which the particular housewife might use. This saving is, of course, produced by the fact that the leavening ingredients are bought in carload lots (Rec., Vol. I, p. 678).

Self-rising flour, scientifically mixed, is also a better food article. (Rec., Vol. I, p. 680, p. 82.)

The grinding millers, who had been vigorously fighting the product, were thus compelled, by its increasing popularity, *to install the necessary machinery and begin the manufacture of self-rising flour* (41 I. C. C., p. 486), and practically all mills selling in this territory are so equipped (Vol. I, p. 157). They are thus merely *the imitators and followers* in this field.

After an interval of keen competition (41 I. C. C., p. 496), the grinding mills, in October, 1916, attempted to induce the railroads to withdraw the "milling in transit" privilege from the Nashville producers, whose number had greatly increased.

This was in the case already cited (Nashville Flour Transit Rules, 41 I. C. C., 483), wherein the Southeastern Millers' Association intervened (Rec., Vol. I, pp. 61-62, pp. 670-671, 41 I. C. C., p. 488), and the proceeding thereafter resolved itself into a fight between these two competing interests (41 I. C. C., p. 487).

Evidence was introduced by both sides as to whether the process used by the Nashville producers was "milling" (Rec., Vol. I, p. 669).

The Interstate Commerce Commission, while stating that the question was "*admittedly a close one, open to honest differences of opinion*" (41 I. C. C., p. 497), found it unnecessary to decide the point—holding, however, that the process of manufacture was *essentially the same in each case*, and that the railroads could not grant the privilege to the grinding mills, while withholding it from the Nashville producers (41 I. C. C., p. 497).

The Nashville manufacturers, after this decision, felt that certainly as to this commodity they had the right to call themselves "mills."

McCarthy (Commission's witness) says:

> "I use the words 'Mills' or 'Milling' in these various trade names for the reason that I consider the manufacture of self-rising flour is a milling process; also the manufacture of process(ed) flour. *This belief is strengthened by the fact that the Interstate Commerce Commission granted us the same milling in transit privileges or rates on self-rising and blended flours as to the mills.*"
>
> (Rec., Vol. I, p. 59; and see also p. 55, p. 62, for similar statements.)

Nobody, so far as the record shows, questioned their right to call themselves "mills" until the present proceeding was begun some twelve years afterward, in 1928.

The learned Federal Trade Commission (as we submit) has remained silent on the question as to whether the Southeastern Millers' Association instigated the present proceeding—failing or refusing to file an answer to the complaints, in which the charge was made (Rec., Vol. II, p. 197, p. 194), despite the fact that it had established in the Court below the precedent of filing not only an answer but a cross-bill when so advised (*Raladam Co.* v. *Federal Trade Commission* (1930), 42 Fed. (2d), 430, 432).

But the inference seems reasonably clear that the Southeastern Millers' Association was the actor, and that this proceeding is merely another step in the thirty years' war between the contending factions.

The record therefore discloses (as we submit) that the tactics thus far employed by the grinding mills are as follows:

1. Campaign of misrepresentation.
2. Attempt to take away milling in transit privilege.
3. Attempt to take away trade names, and discredit respondents.

The effect of sustaining this last attempt, it is respectfully submitted, would be:

First. To put the respondents to a very considerable expense in changing their bags, etc., besides destroying the value of their trade names, and good will (Rec., Vol. I, p. 76, p. 682, p. 23).

Second. To afford a "talking point" to the salesmen of the grinding mills, viz, the claim that respondents (as stated by one witness in another connection) "have been found guilty by a branch of the Federal Government, that they are nothing but ordinary common blenders and pack cheap flour." (Rec., Vol. I, p. 90.)

Third. To disable or weaken respondents (and others in the same business), as competitors; and

Fourth. To disturb the existing balance in the keen competition which now prevails.

The public (we submit) cannot possibly be interested, except in the continuance of this keen competition.

The record, therefore, presents merely a "private controversy"; and this defense was advanced by respondents in their answers to the original and amended complaints, filed respectively on May 20, 1929, and October 3, 1929, (Rec., Vol. I, p. 6, p. 9, p. 17, p. 21)—even before the Court delivered the opinion in the *Klesner* case, which was filed on October 14, 1929. (280 U. S., p. 19.)

The Commission did not notice the point.

II.

SUMMARY OF ARGUMENT.

Respondents submit the following contentions:

1. That petitioner in its last brief attempts to recede from the case on which the writ was granted:

(a) Because its petition and supporting brief dealt only with the requisite of "public interest," and approached this question from the standpoint of the ultimate consumer's right to buy whatever he chose.

Whereas, the last brief attempts to advance the further theory that public interest depends on fair competition, and that a substantial diversion of trade through misrepresentations—where no particular dealer is sufficiently injured to sue—satisfies the requisite of "public interest," and gives the Commission jurisdiction.

No such question was considered below, or raised in the petition.

(b) Because the last brief submitted deals largely with two other requisites which are necessary to support a proceeding under Section 5, viz, that the method is "unfair," and that it is a method of "competition."

The purpose of this is not apparent.

2. That the original theory as to "public interest," advanced in the petition and supporting brief, is unsound:

(a) Because it assumes that ultimate consumers have a preference as between the products of a grinding mill and the products of these respondents.

There is neither pleading nor proof to support this theory.

(b) Because (considered as an abstract proposition) it is not in line with the opinions of this Court, nor with the best considered opinions of the lower Federal Courts.

3. That the new theory of "public interest"—based on the so-called "dictum" or "illustration" in the *Klesner* case—is untenable, even if petitioner may now urge it:

(a) Because that illustration must be read in the light of the whole opinion, whose essential predicate is, that a proceeding under Section 5 must be for the purpose of protecting the public—not the dealer—and the public interest must be specific and substantial; and because the illustration should be harmonized with the opinion in the *Raladam Co.* case.

(b) Because the record does not present the case assumed by the Court in the illustration.

4. Assuming that the two new contentions as to "unfair methods" and "methods of competition" have any place in this dicussion, they are unsound:

(a) Because the theory of the Commission that many dealers have a real preference as between the products of respondents and those of a grinding mill is not supported by substantial evidence, nor is it true that dealers generally in this territory, or any substantial portion of them, have been deceived by the use of the words "Mills" or "Milling" in respondents' names.

(b) Because the claim that trade has been thus diverted, and that legitimate competitors have been thereby injured, is not supported by substantial evidence.

(c) Because the theory that the grinding millers are in any danger from this alleged diversion, is unsupported by any substantial evidence.

5. That even if the findings of the Commission be conceded, the order is inequitable and erroneous:

(a) Because it ignores the offer of respondents to use qualifying words which would prevent the possibility of misunderstanding.

(b) Because it prohibits the respondents from stating that they are "manufacturers" of "self-rising" flour, while permitting the grinding millers (who use exactly the same

process) to make this statement; and because there is no finding to support this part of the order.

(c) Because it inflicts unnecessary hardship on respondents in directing the discontinuance of their trade names, thus putting them to heavy expense and destroying the value of the good will which has been allowed to grow up over a long series of years.

III.

ARGUMENT.

(A)

DEPARTURE FROM THE CASE ON WHICH THE WRIT WAS GRANTED.

In our original Brief (pp. 10-13) attention was called to the variance between the Commission's position as set out in the "Complaints," and the position taken in the petition for certiorari.

An even more serious and substantial variance appears between the petition and supporting brief, on which the writ was granted, and the brief now filed for use in the argument here.

Theory in Petition and Supporting Brief.

The petition, in stating why this Court should grant certiorari, says (p. 7):

> "1. The case presents *a question* of public importance which has not been but should be decided by this Court. The Circuit Court of Appeals, holding that the proceeding was *not in the public interest*, seems to have based its conclusion that the Federal Trade Commission was without authority . . . solely upon the failure of the Commission to find that *respondents' product was inferior to or different from* that of their competitors." (Italics added.)

In the supporting brief, it is said:

"Question Presented."

> "Whether the findings of fact and conclusions of the Federal Trade Commission in this case were sufficient to support its cease and desist orders *without allegation, proof, or finding that respondents' product was injurious to the public or inferior to or different from*

the products sold by its competitors." (Italics added.) (Supporting Brief, p. 10.)

The case is thus reduced to a single issue—whether the requisite of "public interest" exists, when the consumer is led to purchase some article which he did not intend to purchase, even though the article is not inferior, etc.

The whole approach is from the standpoint of the right of the *ultimate consumer* to purchase what he desires, and certain authorities along this line are cited (pp. 12-14).

Federal Trade Commission v. *Klesner* was not relied on as an authority for the petitioner. On the contrary, an attempt was made to distinguish it. (Supporting Brief, p. 16.)

Contention in Last Brief.

But the last Brief filed gets away from this, and takes the position *that public interest depends on fair competition,* and that wherever there is a substantial diversion of trade, by reason of misrepresentations,—although "no particular trader is legally entitled, or sufficiently injured, to obtain redress,"—the element of public interest is present, and the Commission has jurisdiction.

(See Commission's last Brief, p. 21.)

This is to approach the question from the standpoint of the *dealer,* and is frankly predicated upon what the petitioner terms "the dictum of *Federal Trade Commission* v. *Klesner,* 280 U. S., 19, that an unfair practice which is serious and widespread may be a matter of public concern where no private suit to stop it could be brought." (Last Brief, pp. 10-11.)

This is the first mention of the aforesaid "dictum."

No reason is given for this change of position. It may, however, be surmised that the respondents' Brief in opposition—which showed (pp. 13-20) that the Commission's finding as to an alleged preference on the part of consumers was wholly unsupported—was at least a factor.

New Elements of "Unfairness" and "Competition" Introduuced.

In the last Brief under the head of "Questions Presented," it is said:

> "The *principal* question presented is whether, in a proceeding under Section 5 of the Federal Trade Commission Act, the Commission must find that the respondents' product is injurious to the consumer or inferior to that of competitors, in order that its cease and desist order may be in the 'public interest.' A question *also* is presented *whether the Commission's findings that the respondents diverted trade from competitors by falsely representing that they are milling companies and manufacturers of flour is supported by evidence.*" (Italics added.) (Last Brief, p. 2.)

It is, of course, settled that to support a proceeding under Section 5, three requisites must be present:

(a) The methods attacked must be "unfair."
(b) They must be methods of "competition."
(c) The proceeding must be in "the public interest."
Federal Trade Commission v. *Raladam Co.*, 283 U. S., 643, 646-647.

The original petition, as we have shown (*Ante*, p. 11) asked this Court to grant certiorari on a question arising solely under the third requisite above noted.

Why is it now sought to bring in the other two requisites?

We submit that after obtaining a writ of certiorari on a single well-defined issue, the petitioner cannot present a substantially different case, or new questions, on the argument.

Erie R. R. v. *Kirkendall* (1924), 26€ U. S., 185.

(B)

THE THEORY AS TO "PUBLIC INTEREST" ADVANCED IN THE PETITION AND ORIGINAL BRIEF IS UNSOUND.

This contention has been quite fully presented in our original Brief in opposition (pp. 13-28), to which we ask leave to refer.

Without repeating all this, it is respectfully submitted:

1. That the complaints in this proceeding advanced the theory that the consumer was "injured" because a substantial part of the consuming public thought they could get a *better price* from the wheat grinding mill, by the elimination of the middle man's profit. (Rec., Vol. I, p. 15, Respondents' Original Brief, p. 11.)

The theory of public interest stated in the complaints, was therefore a mere extension of the doctrine in *Federal Trade Commission* v. *Pure Silk Hosiery Mills* (C. C. A., 7, 1925), 3 Fed. (2d), 105, and in a line of the Commission's own decisions, where it is held unfair competition for a merchant having no plant or machinery to advertise himself as a "mill," or a "manufacturer," and deceive the public by claiming that he eliminates the middle man's profit and can *make a better price.* (See, for example, *In re New York Twine Mills*, 9 Federal Trade Commission, Dec. 33, *Re Furniture Manufacture Show Rooms*, 9 Federal Trade Commission, Dec. 349.)

This was obviously a very different theory from the present claim that the consumer is "injured" *because there is an interference with his right of choice.*

The present contention is, therefore, unsupported by pleading.

2. There is no proof at all (as we read the record) to support the Commission's finding that "many" consumers prefer to buy flour that comes directly from a concern that ground the wheat into flour rather than one that bought the flour from a grinding concern, mixed it and packed it and then resold it," etc. (Rec., Vol. I, pp. 32-33.)

In our original Brief (pp. 14-20) a full review of the evidence on this point was attempted, which (as we submit) fully sustains this contention.

It was there shown, from the testimony of dealers from all parts of the territory, that consumers have no interest whatever in the maker or manufacturer of flour, but buy almost exclusively *by brand*, just as they buy soap, coffee, and other standard articles.

The testimony of consumers was likewise reviewed (pp. 19-20), with the same result.

Right to Attack Finding.

The Court will perceive that the Commission's finding is attacked, not to put the lower Court in error, but to sustain its decree. This, we understand, is permissible, when the case is here on certiorari, without the necessity for cross-petition.

Story Parchment Co. v. *Paterson Co.* (1931), 282 U. S., 555, 560.

Langnes v. *Green* (1931), 282 U. S., 531, 535-539.

3. It is further submitted that the Commission's original theory of public interest, as presented in the petition, and as amplified in the last Brief, is unsupported by authority. (Original Brief of Respondents, pp. 21-28.)

This theory goes beyond the *Ohio Leather Co. case* (C. C. A., 6, 1930), 45 Fed. (2d), 39, on which petitioner relies. For in that case, the Court merely observed that if purchasers had a real preference—which the Court doubted (See 45 Fed. (2d), p. 41, p. 42, note 6)—as between goat-skin shoes and calf-skin shoes, they were entitled to get what they wanted, even though the other might be "just as good."

If the respondents made their self-rising flour from some other cereal than wheat, or with some other leavening ingredients than salt and baking powder, there would be an analogy between the two cases. But here the two articles are precisely the same, made in precisely the same way.

No difference in quality was alleged in the complaints, or set out in the findings, for the evident reason *that no difference existed.*

We are persuaded that the *Klesner case* stands squarely in the way of petitioner's contention. Sammons and Klesner (it would appear) sold precisely the same article. Klesner's shades were not inferior (280 U. S., p. 28), and the mere fact that customers *wished to buy from Sammons,* and were misled by false representation into buying from Klesner, was *not* sufficient to show "public interest."

It will be remembered that the Court said:

> "This use by Hooper & Klesner of the term 'Shade Shop' has caused, and is causing, 'confusion to the window-shade purchasing public throughout the District'; and on certain occasions, customers who entered Hooper & Klesner's shop were deceived by employees, being led to believe that it was Sammons'." (280 U. S., p. 24.)

We submit that this goes beyond anything shown in the present case.

Nor do we believe that the Klesner case turned on the fact that only two individuals were involved. If the case is to be confined to its own facts, it will cease to be an authority—for it may be safely predicted that the Federal Trade Commission will never bring another suit where only two competitors are concerned. Moreover, such a view overlooks the fact that the "window-shade purchasing public" was involved; and no difference is apparent between the public in the District of Columbia and the public in the Southeastern territory.

In the *Winsted Hosiery Company* case (258 U. S., 453), there was a deceptive substitution of an inferior article for a superior article—obviously to the financial injury and exploitation of the public.

In the *Raladam Company* case there was danger of actual physical injury to the public.

In the *Ohio Leather Company* case (*Ante*, p. 15)—if it is to be considered an authority—calf-skin was substituted for kid-skin. It seems, however, plain, that the lower Court takes no stock in petitioner's present theory. This was shown, not only by its opinion in the present case, but by its previous pronouncements in *L. B. Silver* v. *Federal Trade Commission*, 289 Fed., 985, 989, and *Berkey & Gay Furniture Co.* v. *Federal Trade Commission*, 42 Fed. (2d), 427, 430. (See Respondents' original Brief, pp. 25-26 for review of these cases.)

So in *Indiana Quartered Oak Co.* v. *Federal Trade Commission* (C. C. A., 2nd, 1928), 26 Fed. (2d), 340, the dealer had been selling as "Philippine Mahogany" or "Mahogany"

certain hardwoods imported from the Philippine Islands, which belonged to the lauan or tanguile family, and not to the genuine Mahogany family. But the evidence showed in that case "that many of the characteristics and virtues possessed by Mahogany are lacking in Philippine hardwood" —for example, that it was too soft for flooring, that it could not take the required finish for lamps and pianos; that it did not retain the sub-surface lustre peculiar to Mahogany, and, unlike Mahogany, did not beautify with age. (26 Fed. (2d), p. 341.) To sell this for genuine Mahogany was like selling cotton for wool. The purchasing public was in fact "injuriously affected."

Federal Trade Commission v. *Balme* (1928), 23 Fed. (2d), 615, on which the petitioner relies, was based on that part of the Commissioner's order which dealt with the simulation of a container (p. 617), and seems to us to stress too much the rights of the dealer, the simulation of brands, the resulting confusion, etc.,—as if such a proceeding were only a suit in equity to restrain unfair competition. We are unable to reconcile this with the *Klesner case*, or with the *Raladam Co. case*. The Court seems to treat *Federal Trade Commission* v. *Winsted Hosiery Mills* as if it were merely a case of misbranding (23 Fed. (2d), p. 620).

We recognize that misbranding has been pointed out as an "unfair" method, (*Federal Trade Commission* v. *Raymond Bros.-Clark Co.* (1924), 263 U. S., 565, 566), but submit that this Court has never indicated that misbranding is in and of itself sufficient to supply the requisite of "public interest."

However this may be, there is here no case of misbranding, or simulation of competitors' bags and containers; and no such charge is made in the complaints, or in the petition for certiorari. Nor is there any such finding by the Commission, or any such proof.

As hereinbefore shown (*Ante*, p. 14), the public buys flour *by brands*, and there is no pretense that respondents have simulated any brands of the grinding mills.

Claim of Additional Burden.

As to the claim that an additional burden will be placed on the Commission to show inferior quality in all these cases, if the opinion below shall be sustained:

The burden has always been on the Commission to show a "public interest" which is "specific and substantial." (*Federal Trade Commission* v. *Klesner*, 280 U. S., at p. 29; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S., at p. 649.)

Mere deception of purchasers is *not* sufficient—the purchaser must be "*injuriously* affected" (*Federal Trade Commission* v. *Klesner*, 280 U. S., p. 27, p. 28), as in the *Winsted Mills case*, or else the danger to competition must be such as to "injuriously affect the public."

(*International Shoe Co.* v. *Federal Trade Commission*, 280 U. S., p. 298.)

If the element of palming off an inferior product on the public (cotton for wool) is involved, the Commission should be required to allege and prove it.

If it is *not* involved,—if there is a mere deception without "injury"—(Klesner's window shades for Sammons' window shades)—then no public interest exists; unless, of course, it can be developed along the line of danger to competition.

All this, however, as we respectfully submit, cannot concern the instant case. For here there is not even the theoretical injury of interference with the customer's preference. No such preference exists. (*Ante*, p. 14.) And the petitioner's statement of the question at issue concedes that there is neither allegation, finding, or proof of inferiority. (*Ante*, p. 11.)

(C)

THEORY OF "PUBLIC INTEREST" BASED ON THE ILLUSTRATION USED IN THE KLESNER CASE HAS NO APPLICATION.

"Public interest" (we submit) can exist in only two cases:

1. Where purchasers are physically or financially injured.

2. Where unfair methods are practiced, which tend to establish a monopoly, with its resulting train of evils.

It may be true that since the decision in *Federal Trade Commission* v. *Raladam Co.* (1931), 283 U. S., 643, only the latter class exists.

This was apparently the belief of Judge Denison, who advanced the theory in his dissenting opinion in the *L. B. Silver Company case* that the Federal Trade Commission Act was never intended to reach methods of unfair competition, except such "as tend toward that monopoly or restraint of competition which the anti-trust acts prohibit."

L. B. Silver Co. v. *Federal Trade Commission* (C. C. A., 6th, 1923), 289 Fed., 985, 993.

It is hardly necessary to say that this idea formed the basis of his opinion in *Raladam Co.* v. *Fed. Trade Commission* (1930), 42 Fed. (2d), 430, 435-437.

In any event, the petitioners' new theory must fall within the second class—for it does not attempt to establish "public interest" through direct injury to the ultimate consumer.

If direct injury to the consumer is out of the way, the only other alternative is to show unfair methods which tend to break down competition, and thus produce monopoly.

It is submitted that the Court did not intend to say in the "illustration" on which the petitioner relies, that mere losses on the part of dealers, which were in each case too small to warrant a private suit, would show "public interest"—unless indeed the results in the aggregate were so serious and widespread *as to endanger the welfare of the public, because tending to establish an ultimate monopoly.*

By this reading, the statement is reconciled with the Court's opinion in *Federal Trade Commission* v. *Raladam Co.*

Of course the mere fact that *some* trade is diverted by the unfair practice is *not* sufficient to give jurisdiction—

for that occurs in every unfair competition case, as the *Klesner* case specifically recognizes. (280 U. S., p. 27.)

Sammons' trade was diverted by Klesner, in that very case (Id., p. 24).

It is the *widespread and serious* diversion, tending to destroy the business of competitors, which makes the difference.

If we are correct in this view, it seems quite apparent that the principle for which petitioner contends can have no bearing in this case.

For here, the record shows without contradiction:

1. That respondents have been using trade names with the words "Mills" or "Milling" for many years. Royal Milling Company was established in 1902 (Rec., Vol. I, p. 23); Nashville Roller Mills was established in 1908 (Rec., Vol. II, p. 60); Snell Milling Company was established in 1925 (Rec., Vol. II, p. 98); State Milling Company was established in 1912 (Rec., Vol. II. p. 137); Cherokee Mills was established in 1910 (Rec., Vol. II, p. 172).

2. There is no claim that the Nashville manufacturers are organized.

3. The grinding millers, on the other hand, have maintained a powerful trade organization (Southeastern Millers' Association), which was in existence at least as early as 1916 (41 I. C. C., p. 488).

4. The two factions were engaged in "very real and active competition" previous to 1916 (41 I. C. C., p. 496).

5. That competition, in its most active form, was in existence when the proof in these cases was taken. (Rec., Vol. II, p. 190, p. 191; Vol. I, p. 673, p. 679, p. 683, *Ante*, p. 2.)

The petitioner's argument, therefore, seems to ignore the actual situation, and indeed to approach the ludicrous —especially when it is considered that *all attempts to break*

down competition have been made by the grinding mills. (*Ante*, pp. 4-6.)

We submit that the Southeastern Millers' Association may be very safely trusted to take care of itself in the future as it has in the past—for all the power and wealth seem to be on that side. Petitioner is careful to point out that a 3,000-barrel grinding mill "costs about $600,000." (Last Brief, p. 5.)

(D)

THE CONTENTIONS AS TO UNFAIR METHODS AND DIVERSION OF TRADE ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Much of the petitioners' last brief seems to be devoted to these contentions, which as previously shown (*Ante*, p. 13), were not brought forward in the petition and supporting brief, as questions to be considered,—although certain facts along these lines were stated.

Assuming, for argument's sake, that they are pertinent to this discussion, it is submitted that they find no support in this record.

The Court has held that the purpose of the Federal Trade Commission Act is "the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree" (*Fed. Trade Com.* v. *Raladam Co.*, 283 U. S., at pp. 647-648); and in reviewing the debates in Congress attendant upon the passage of the Act:

> "that by the words 'unfair methods' was meant those resorted to for the purpose of *destroying competition* or of *eliminating a competitor* or of *introducing monopoly* —such as tend unfairly to *destroy* or injure the business of a competitor; that the law was necessary to protect small business against *giant competitors;* that it was an effort to make competition stronger in its fight against monopoly; that unfair competition was that practice which *destroys competition* and *establishes monopoly.*" (Italics added.) (283 U. S., p. 650.)

The facts as to the existing status have just been reviewed (*Ante*, p. 20), and from this it is apparent that the keenest competition exists, and that the rights and interests of the consuming public are fully protected.

It seems a singular thing that the Federal Trade Commission, by theoretical arguments and refinements as to the meaning of "public interest," should seek to bring about a situation which will in fact impair or destroy the *actual* interest of the public as it now exists.

Literature.

We have never contended that respondents, in their circulars, etc., had the right to say that they were grinders of wheat, and admit that they have no such right.

Reference is made in the Commission's Findings (Rec., Vol. I, pp. 31-32, Vol. II, pp. 31-32, pp. 69-70, pp. 107-108, pp. 145-146, pp. 182-183), to literature, advertisements, etc., alleged to be put out by Respondents, as if the excerpts quoted were typical of each Respondent's advertising.

But when these are analyzed, it appears:

(a) That the only excerpts which might fairly be said to imply "wheat grinding" are attributable to a *single Respondent*, viz, State Milling Company (Rec., Vol. II, pp. 145-146).

This is frankly shown in the Petitioner's last Brief (p. 15).

The *dates* of these alleged statements are not shown in the Findings of the Commission. Nor is there anything to show that these statements were *habitually made* or were anything other than isolated cases. It does not even appear from the Findings that these statements were made by the present owners of the business, who only acquired it in 1924. (Stipulation, Rec., Vol. II, p. 137.) The original exhibits (which are not accessible) may, of course, fix this.

(b) As to the various statements to the effect that Respondents are *"manufacturers,"* it is insisted that they had the right to so style themselves—not manufacturers of wheat, but manufacturers of *self-rising and processed flour.*

As to these commodities, *they stand on exactly the same basis as their wheat-grinding competitors.*

The cases are, of course, *identical* where these competitors buy flour from others, put it through their batch-mixers, and put it out under their own brands, according to the widespread and well-established practice in this behalf. (See our Original Brief, p. 6.)

But the two operations are essentially the same where the grinding mill makes its own flour. The making of "self-rising" or "processed" flour is a *wholly separate process*, which is *exactly the same* in either case. (Original Brief, p. 5.)

If respondents are not manufacturers of *self-rising* flour, neither are their wheat-grinding competitors.

(c) The references to "wheat" are explained by the following stipulations:

> "That the *price of wheat*, as fixed by the St. Louis wheat market, is a factor *which enters into the price of flour* in the Southeastern territory, and is so regarded by operators of wheat-grinding mills as well as by operators of the plants for the making of 'self-rising' or 'processed' flour in Nashville, *and by wholesale and retail merchants* in said Southeastern territory" (Docket 1599, Stip., Par. III, Section 13, Rec., Vol. II, p. 62, which is applicable to all these cases as shown by Par. II of same Stipulation, Rec., Vol. II, p. 60).

Respondents' customers, buyers of self-rising and processed flour, are of course interested in the wheat market, for it directly affects the price of the commodity which they are buying.

(d) As to the references to daily output or capacity, and cutting out the middleman's profit, they are *true*. Each of the respondents has a plant and actual machinery for the manufacture of their products. And all of their business (except Nashville Roller Mills) *goes direct to the retailer.* (See Stipulations.)

"Deception" of Merchants and "Diversion of Trade" by Use of the Word "Mills."

It is submitted that no substantial part of the merchants in this territory are deceived by the use of the word "Mills" in Respondents' names, and for that reason became purchasers of their products, etc., although the Commission made findings to that effect. (See, for example, Rec., Vol. I, pp. 32-33.)

The Commission, in February, 1928, wrote letters, requesting from ten Nashville concerns dealing in "self-rising" flour, lists of twenty-five of their customers. These concerns included the seven original respondents, and three other individuals who used the word "Mills' 'in their trade names, but who had, in fact, no plant or machinery of any kind, and whose cases are not involved herein (Rec., Vol. I, pp. 663-664, Ex. 68; Vol. II, p. 24, pp. 62-63, p. 100, pp. 138-139, pp. 174-175).

Nine of said concerns so interrogated complied with the request (citations *supra*)—whereupon the Commission sent questionnaires to each of these 225 customers, asking their understanding of the word "Mill," whether they thought it to their advantage to buy from a grinding mill, etc. (See Rec., Vol. I, p. 140, pp. 143-144, p. 193, p. 209.) But for this purely voluntary action on the part of respondents, it would have been difficult, if not impossible, for the Commission to have circularized their customers.

Although 225 merchants were thus interrogated by the Commission, *only twenty-three witnesses of this class* were introduced in its behalf.

The record does not show how many answered the questionnaires, nor what they said, nor why only twenty-three were deemed available as witnesses by the Commission.

But the record does show that of these twenty-three selected witnesses, *six*, or more than one-fourth, testified that they were not "deceived," and knew from business experience, or otherwise, that the Nashville producers using the name "Mills" did *not* grind wheat.

Thus, in the examination of Commission's witness *Murphee*, the following occurred:

"EXAMINER SHEPPARD: If you see the word 'milling' or 'mill' on the outside of the container, would that indicate to you that the manufacturer was a grinder of grain?"

"A. Well, MR. EXAMINER, of course I *know now from experience*, I have been in business, that the blenders use the word 'mill,' therefore, really, unless I know, *it would not convey any meaning* to me at all." (Rec., p. 124.)

See also the following witnesses for the Commission:

Harrison ("I think it has been *generally known for several years* that the blenders call themselves millers"). (Rec., p. 135.)

Starks ("Well, it would indicate one who ground wheat into flour, but I do not understand it as such, because of my experience. *I understand it is one who grinds wheat into flour or mixes it, or blends it*"). (Rec., p. 204.)

Warner (Got the information through salesmen from the flour mills). (Rec., p. 209.)

Franklin ("I have found that it is *used generally by the blending plants* as well as the people that grind"). (Rec., p. 211.)

Taylor ("Well, from my experience, what I have learned, what I have heard, rather, for a number of years, there was *not but one wheat mill that manufactured wheat into flour in Nashville*, and maybe it was down a part of the time"). (Rec., p. 277.)

Seven others of the twenty-three testified that they *preferred* to buy flour from "blenders," or that they were *indifferent* as between "grinders" and "blenders."

Metcalf (Commission's witness):

"Q. Does the use of either of these words in the name of a concern selling flour convey or have any influence on you in making purchases of flour?

"A. *No, sir*" (Rec., p. 194).

Sewell (Commission's witness) (Rec., p. 146), prefers to buy from mixer "because I get better service and get just as good a product."

Adams (Commission's witness):

"Q. If the price is right, and the quality right and service right, those would determine you in buying?

"A. Sure." (Rec., p. 151.)

Grist (Commission's witness), "A man in the retail business will buy the flour he can get the trade to take the most of." (Rec., p. 207.)

Bought on price, quality and service. (Rec., p. 208.)

Wakefield (Commission's witness), price, quality of article and service guide, in purchase.

"Q. And those determine your purchase, always?

"A. Yes, sir." (Rec., p. 270.)

Suter (Commission's witness),

"Since I have found out the difference, I *would rather buy from the blender.*" (Rec., p. 191.)

Davis (Commission's witness), questioned as to preference:

"Well, I don't think it would really make any difference with me.

"Q. Is there any difference in the quality of the flour coming from the two concerns?

"A. *I don't know of any.*" (Rec., p. 141.)

What Really Influences Merchants?

Each one of these thirteen witnesses, we may be sure, signed a questionnaire indicating a preference for the products of a grinding mill—but that preference, like so many of the Commission's contentions herein, was merely *theoretical.*

What merchants really prefer is to buy an article which satisfies their customers, and at a price which leaves a profit.

As stated by the Commission's witness *Franklin:*

> "I prefer to buy the flour that comes from the fellow I can buy it cheapest from, that will satisfy the trade." (Rec., Vol. I, p. 213.)

It seems obvious that this must be correct, especially when it is recalled *that consumers in the territory have no preference* at all, as to maker, but buy the particular brands which they like, irrespective of the source of manufacture.

(See original Brief, pp. 14-20, where the evidence is fully reviewed.)

The facts which really control merchants—which seem almost self-evident—were clearly shown by a large number of witnesses coming from various parts of the Southeastern territory, introduced on behalf of respondents.

McBryar, (Rec., pp. 383-384).
Mobley, (Rec., p. 391).
Cook, (Rec., p. 399).
Sherrill, (Rec., p. 405).
Cannon, (Rec., p. 409).
Hughes, (Rec., p. 413).
Lisle, (Rec., p. 422).
Jackson, (Rec., p. 426).
Bryant, (Rec., p. 444).
Rogers, (Rec., p. 448).
Rottero, (Rec., p. 455).
Campion (buyer for Piggly-Wiggly stores, Rec., p. 460).
Coode (former President National Association of Retail Grocers, Rec., p. 465).
Schutt, (Rec., p. 469).
Hall, (Rec., p. 473).
Gupton (former mayor of Nashville, Rec., p. 479).
Schafer ("We are not interested in that as long as the flour stands up and gives the trade satisfaction.") (Rec., p. 483.)
Bannon, (Rec., p. 493).
Murff, (Rec, p. 498).
White, (Rec., pp. 502-503).
Skillern, (Rec., pp. 505-506).
Clayton, (Rec., pp. 512-513).
Whiteside, (does annual business of one and a half to two millions, Rec., p. 516).
Hensley, (Rec., pp. 520-521).
McDonald ("No, there are so many blenders, grinders, that to know the name of the mill you have to know what it is. *There is no longer any distinction*).

"Q. 17. *The word 'milling' has no distinct significance?*

"A. *Has no distinction, no, sir.*" (Rec., p. 529.)

(Witness is manager of chain stores (41) in Chattanooga and neighboring towns, and does annual business of $1,055,000.00.) (Rec., p. 528, p. 529.)

Odom, (Rec., p 574).

Cassels, "Q. 13. Whether he classes himself a manufacturer, a blender or a miller, cuts no figure with you?

"A. *Absolutely none whatever*, if the flour has got the grade, the price is satisfactory, it makes no difference, absolutely." (Rec., p. 579.)

Sloan, (Rec., p. 584).
Lovingwood, (Rec., pp. 585-586).
Walker, (Rec, p. 587).
Bryson, (Rec., p. 592).
Ketner, (Rec., p. 594).
Williams, (Rec., p. 597).
Murphy, (Rec., pp. 607-608).
Bumbus, (Rec., p. 610).
Sneed, (Rec, p. 612).
Vantrease, (Rec., p. 614).
Gower, (Rec., p. 617).
Smotherman, (Rec., p. 619).
Pardue, (Rec, p. 623).
Fehr, (Rec., p. 622).

The fact that the Commission may have been able to find some 10 or 12 merchants out of 225 attempts—most of them from the smallest country towns or villages,—whose testimony may show that *these particular witnesses were "misled,"* and thought the Nashville manufacturers ground wheat, does not support the Commission's claim, against the direct testimony of intelligent and experienced dealers or salesmen (Rec., Vol. I, p. 433, pp. 508-509, p. 301, p. 481, p. 581) thoroughly familiar with the subject, *as to conditions prevailing in this territory.* The question is as to the whole territory—not what a few selected individuals may believe. And business is not transacted on the theoretical preferences of dealers. The factors are price and satisfaction of the customers.

We, therefore, submit that when the whole record is considered, there is no substantial basis for the Commission's conclusions as to diversion of trade by reason of the word "Mills," and that the same are clearly erroneous.

Competitors' Conduct.

Another element overlooked by the Commission is thus stated by the lower Court, viz.: "Upon occasion some of the grinding mills buy surplus flour from other grinding mills, and when this is done the purchasers sell the flour under their own labels." (Rec., Vol. II, p. 190.)

This widespread practice is fully discussed in our original Brief (p. 6, pp. 31-32), and its nature and extent shown.

We think it can hardly be considered "immaterial" (Commission's last Brief, p. 18), nor is it so restricted as opposing counsel suggest.

This, we submit, raises the question of *legitimate* competition.

See,

Federal Trade Commission v. *Raladam Co.*, 283 U. S., at p. 652.
Ohio Leather Co. v. *Federal Trade Commission*, 45 Fed. (2d), at p. 42.
Raladam Co. v. *Federal Trade Commission*, 42 Fed. (2d), at p. 437.

(E)

ASSUMING THE CORRECTNESS OF THE FINDINGS, THE COMMISSION'S ORDER WAS NOT JUSTIFIED.

The orders in these cases direct the respective respondents to

> "cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under a trade name or any other name which includes the words 'Milling Company' or words of like import, and from making representations through advertisements, circulars, correspondence stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they or either of them is a manufacturer of flour, or that

> the flour sold by them or either of them comes direct from manufacturer to purchaser, unless and until respondents, or the individual respondent using such words or making such representations, actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by them or either of them under such title or name, or by or through any such representations." (Rec., Vol. I, pp. 34-35.)

If jurisdiction and the Commission's premises should be, for the sake of argument, conceded, we submit that they do not justify such an order.

1. The order ignores the offer of respondents, made early in the proceedings, to use qualifying words, in conspicuous lettering, in connection with bags, containers, letter-heads, etc., which would prevent the possibility of mistake or deception.

Six of the original respondents offered to use the words "NOT GRINDERS OF WHEAT."

The offer made on behalf of respondent Cherokee Mills was not the same, because it was engaged, as part of its business, *in grinding wheat and corn*—though not for human consumption. It, therefore, offered to use the words "PACKED BY CHEROKEE MILLS," with respect to its flour products.

These offers were made by letters to the Commission, and also in the answers to the amended complaints. (Rec., Vol. I, pp. 684-685 p. 20, p. 25, Vol. II, p. 18, p. 56, p. 94, p. 100, p. 134, p. 138, p. 174.)

The Commission acknowledged receipt of the offers and ordered "that said suggested solutions be considered at the time of final argument on the merits."

This was on October 19, 1929 (Rec., Vol. I, p. 22, Vol. II, p. 21, p. 97, p. 136, p. 171), after the Commission's proof as to "deception" had been taken (Rec., Vol. I, p. 294, p. 284).

The offers were made before any proof was taken by respondents, but they were apparently ignored by the Commission. The lower Court commented on this. (Rec., Vol. II, p. 190.)

The Commission seems rather hard put to find a good reason for this. In the lower Court it claimed in its Brief that the qualifying words would but continue the deception, for it would mean to purchasers generally that respondents *"extracted from the wheat the flour which they sell by some other means than grinding the wheat."* The nature of this new process was not explained.

In the present Brief this novel theory is abandoned in favor of the more conservative claim that:

> "In its final decision the Commission was not required to allow respondents to continue their misrepresentations followed by a disavowal." (Last Brief, p. 26.)

We submit that the Commission is without authority for such a claim, and that there is very respectable authority to the contrary.

> *N. Fluegelman & Co.* v. *Fed. Trade Commission* (C. C. A. 2, 1930), 37 Fed (2d), 59, 61.

(Right upheld to use the word "Satin-Maid" as a trade mark on products in fact made from cotton, where there appear in equally conspicuous lettering the words "a cotton fabric," "a cotton satin," "no silk," or equivalent modifying terms.)

> *Federal Trade Commission* v. *Cassoff* (C. C. A. 2, 1930), 38 Fed. (2d), 790, 791.

(Manufacturer labeled his products "White Shellac" and "Orange Shellac," but stated on labels and advertising matter: "This is not 100 per cent India Shellac, it is composed of substitute Shellac and India Shellac.")

> *Federal Trade Commission* v. *Good Grape Co.* (C. C. A. 6, 1930), 45 Fed. (2d), 70, 72.

(Company ordered to desist from use of words "Good Grape" or "Grape," *"unless* in the same connection it is

made prominently to appear *that the product is an imitation artificially colored and flavored.*" (Italics added.)

We submit that these offers were more than fair, and should have been accepted when made, without putting respondents to the heavy expense of bringing witnesses and taking proof; and certainly, that the action, by which the offers were ignored on final hearing, was without legal justification. When the qualifying phrase is used "there can be no deception of the public." (*Fluegelman* case, *supra*, at p. 61.)

2. There is no finding that the making of "self-rising" and "processed" flour by respondents is *not* a manufacturing process, and we submit that plainly it is.

Raw materials are assembled, and by the use of machinery a finished product is created therefrom. (Rec., Vol. I, pp. 42-46, p. 55, pp. 67-70, pp. 72-73, pp. 665-667.)

Nor is it apparent how respondents can fairly be denied the use of the term "manufacturer" with regard to *self-rising* flour, when it is permitted to the grinding mills, who use exactly the same process. (*Ante*, p. 23.)

The order seems beyond the findings, and also inequitable, in this respect.

3. If any of the respondents, in their literature, have claimed that they were wheat grinders—and in only one case can this be charged (*Ante*, p. 22)—then it might be proper to order this particular respondent to desist from these particular representations.

But to take away the trade names of all the respondents, to put them to the heavy expense which the change would require (Rec., Vol. I, p. 76, p. 682), and to destroy the value of long accumulated good will—$7,500.00 was paid for the good will of Royal Milling Company in 1917 (Rec., Vol. I, p. 23)—seems to us both unjust and unnecessary.

It would merely penalize the respondents in favor of competitors who are buying flour from other grinding mills and selling it under their own brands in this very territory

(Rec., Vol. I, pp. 247-249, pp. 571-572, p. 566, pp. 557-558; Original Brief, pp. 6-7), and tend to stifle, rather than promote the existing competition.

We are unable to see how this would benefit the public.

CONCLUSION.

Respondents, therefore, insist:
1. That the Commission was without jurisdiction.
2. That if it had jurisdiction, the cases fail on the merits.
We ask that the decree be affirmed.

Respectfully submitted,

THOMAS H. MALONE,
Counsel for Respondents.

January, 1933.

SUPREME COURT OF THE UNITED STATES.

No. 393.—October Term, 1932.

Federal Trade Commission, Petitioner, *vs.* Royal Milling Company, et al. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[February 6, 1933.]

Mr. Justice Sutherland delivered the opinion of the Court.

This writ brings here for consideration six orders made by the Federal Trade Commission under § 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719, Title 15, U. S. C., § 45, which declares that unfair methods of competition in interstate commerce are unlawful. Proceeding under the act* the commission filed separate complaints against respondents, each of whom operates a business, either as a corporation, partnership or an individual, in the City of Nashville, Tennessee. All are engaged in preparing for the market self-rising flour and plain flour and selling the same in interstate commerce. None of them grind from the wheat the flour which they thus prepare and sell, but only

*"Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. . . . If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition.

. . . . . .

"The findings of the commission as to the facts, if supported by testimony, shall be conclusive."

mix and blend different kinds of flour purchased from others engaged in grinding. After being mixed and sifted, the flour, either plain or made self-rising, is packed into bags for the market. Most of the concerns grinding wheat into flour and selling in the same market also make self-rising flour and blended plain flour, ground from different sorts of wheat.

One of the respondents does business under the names, "Royal Milling Company," "Richland Milling Company," and "Empire Milling Company." The others use trade names of similar import, all containing the words "milling company," or "mill," or "manufacturer of flour"—words which are commonly understood by dealers and the purchasing public to indicate concerns which grind wheat into flour.

There are other concerns engaged in the business of producing plain and self-rising flour, by a process of mixing and blending, and selling the product in the same market in competition with respondents and with the grinders; but these do not name themselves millers, mills, or milling companies, or hold themselves out in any way as grinders of grain. The business involved is large and the competition among the several concerns substantial; and the use of the enumerated trade names by the respondents tends to divert and does divert business from both the grinders and those blenders who do not use such trade names or an equivalent therefor. Respondents have circulated written and printed circulars among the trade which either directly assert, or are calculated to convey the impression, that their product is composed of flour manufactured by themselves from the wheat. These statements and the use of the trade names under which respondents do business have induced many consumers and dealers to believe that respondents are engaged in grinding from the wheat the product which they put out. The respondents, early in the proceeding before the commission, offered "to place on their letterheads, bags, invoices, etc., in conspicuous lettering the words: 'Not Grinders of Wheat.'" This offer the commission evidently thought it unnecessary to consider, in view of the more comprehensive conclusion which it reached as to the remedy.

The findings of the commission, supported by evidence, in substance embody the foregoing facts, and much else which for present purposes it is unnecessary to repeat. From these findings the

commission concluded that the practices of respondents were to the prejudice of their competitors and of the public and constituted unfair methods of competition within the meaning of § 5 of the Federal Trade Commission Act. Thereupon, the commission issued its orders against respondents to cease and desist from carrying on the business of selling flour in interstate commerce under a trade name or any other name which included the words "milling company," or words of like import, and from making representations, designed to affect interstate commerce, that they or either of them manufacture flour or that the flour sold by them comes direct from manufacturer to purchaser, etc.

Upon review the circuit court of appeals set aside all orders of the commission, upon the ground that the proceeding by the commission did not appear to be in the interest of the public. 58 F. (2d) 581.

To sustain the orders of the commission, three requisites must exist: (1) that the methods used are unfair; (2) that they are methods of competition in interstate commerce; and (3) that a proceeding by the commission to prevent the use of the methods appears to be in the interest of the public. *Fed. Trade Comm.* v. *Raladam Co.*, 283 U. S. 643, 646-647. Upon the first two of these we need take no time, for clearly the methods used were unfair and were methods of competition. *Federal Trade Comm.* v. *Winsted Co.*, 258 U. S. 483, 492-494; *Fed. Trade Comm.* v. *Raladam Co.*, *supra*, at pp. 651-652.

We also are of opinion that it sufficiently appears that the proceeding was in the interest of the public. It is true, as this court held in *Federal Trade Comm.* v. *Klesner*, 280 U. S. 19, that mere misrepresentation and confusion on the part of purchasers or even that they have been deceived is not enough. The public interest must be specific and substantial. In that case (p. 28) various ways in which the public interest may be thus involved were pointed out; but the list is not exclusive. If consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so, and this right cannot be satisfied by imposing upon them an exactly similar article, or one equally as good, but having a different origin. Here the findings of the commission, supported by evidence, amply disclose that a large number of buyers, com-

prising consumers and dealers, believe that the price or quality or both are affected to their advantage by the fact that the article is prepared by the original grinder of the grain. The result of respondents' acts is that such purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin. We are of opinion that the purchasing public is entitled to be protected against that species of deception, and that its interest in such protection is specific and substantial. *Federal Trade Commission* v. *Balme*, 23 F. (2d) 615, 620. Compare *Federal Trade Comm.* v. *Winsted Co., supra; Ohio Leather Co.* v. *Federal Trade Commission*, 45 F. (2d) 39, 41. There is nothing in the *Klesner* case to the contrary.

Although we sustain the commission in its findings and conclusions to the effect that the use of the trade names in question and the misstatements referred to constituted unfair methods of competition within the meaning of the act, and that its proceeding was in the interest of the public, we think under the circumstances the commission went too far in ordering what amounts to a suppression of the trade names. These names have been long in use, in one instance beginning as early as 1902. They constitute valuable business assets in the nature of good will, the destruction of which probably would be highly injurious and should not be ordered if less drastic means will accomplish the same result. The orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public; and this can be done, in the respect under consideration, by requiring proper qualifying words to be used in immediate connection with the names. See *N. Fluegelman & Co.* v. *Federal Trade Commission*, 37 F. (2d) 59, 61; *Federal Trade Commission* v. *Cassoff*, 38 F. (2d) 790, 791; *Federal Trade Commission* v. *Good-Grape Co.*, 45 F. (2d) 70, 72. Compare *Herring, &c. Safe Co.* v. *Hall's Safe Co.*, 208 U. S. 554, 559; *Warner & Co.* v. *Lilly & Co.*, 265 U. S. 526, 532; *R. Guastavino Co.* v. *Comerma*, 184 Fed. 549; *Warshawsky & Co.* v. *A. Warshawsky & Co.*, 257 Ill. App. 571, 584 *et seq.* This is a matter which the commission has not considered but which, as the body having primary jurisdiction, it should, in the first instance, consider and determine. And in doing so it will be enough if each respondent be required by modified

order to accompany each use of the name or names with an explicit representation that respondent is not a grinder of the grain from which the flour prepared and put out is made, such representation to be fixed as to form and manner by the commission, upon consideration of the present record and any further evidence which it may conclude to take. In respect of other particulars, the orders of the commission are sustained.

The decree below, therefore, will be reversed, and the proceeding remanded to the circuit court of appeals to be disposed of in conformity with this opinion.

Decree reversed.

Mr. Justice McReynolds and Mr. Justice Roberts are of opinion that the decree below should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.